Supreme Court, U.S.
FILED
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No. _____

In The

Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Respondents.

On Petition For Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

PETITION FOR WRIT OF CERTIORARI

ANTHONY G. VASEK,
Petitioner In Propria Persona
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QUESTIONS PRESENTED FOR REVIEW

1. WERE PETITIONER'S EQUAL PROTECTION RIGHTS VIOLATED WHEN:

   A. AFTER HE PREVAILED ON APPEAL, PETITIONER WAS REQUIRED TO FILE CRUCIAL TRIAL COURT PAPERS BY DEADLINES THAT HE COULD NOT MEET BECAUSE THEY PRECEDED, BY MORE THAN TWO MONTHS, THE DATE ON WHICH THE FULL CONTENTS OF THE APPELLATE COURT'S DECISION WERE COMMUNICATED TO HIM DEFINITIVELY FOLLOWING AN ERROR BY THE APPELLATE COURT AND, BY MORE THAN FIVE MONTHS, THE DATE ON WHICH THE MAJORITY OF DEFENDANTS ON REMAND WERE REINSTATED AFTER BEING DROPPED FROM THE CASE THROUGH YET ANOTHER ERROR ON THE PART OF THE APPELLATE AND TRIAL COURTS?

   B. PETITIONER WAS PROHIBITED FROM INCLUDING THE REINSTATED DEFENDANTS IN HIS NEXT AMENDED COMPLAINT EVEN AFTER THE STATE APPELLATE COURT HAD DECLARED THAT PETITIONER WAS ENTITLED TO PROCEED AGAINST THEM IN THE TRIAL COURT?

2. DOES THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AFFORD A LOCAL CALIFORNIA COMMUNITY COLLEGE DISTRICT, AND ITS OFFICIALS ACTING IN THEIR OFFICIAL CAPACITIES, IMMUNITY FROM A 42 U.S.C. §1983 SUIT?

LIST OF PARTIES AND THEIR ATTORNEYS OF RECORD IN THE COURT BELOW

Plaintiff/Appellant and Petitioner ANTHONY G. VASEK

Attorneys of Record: In Propria Persona

Defendants/Respondents MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT, a public entity (erroneously sued and served as MT. SAN JACINTO COLLEGE DISTRICT), BOBBY AVILA, LAWRENCE BARKLEY, DAVID BOOKIN, CLAIRE BROYLES, BENTON CALDWELL, BERNARD J. CARRIGAN, ALICE CUTTING, BENJAMIN DAVIS, WILLIAM FARRELL, ELGIN HUSHBECK, EUGENE KADOW, MARCIA L. KRULL, RICHARD H. LOWE, ROBERT McNERNEY, ANN MOTTE, JOHN MOTTE, STEVE NARIN, KAZI NIZAMUDDIN, SHAHLA RAZAVI, KELLY ROBERTS, ROBERT G. ROCKWELL, DON ROHRABACHER, GWENDOLYN SCHLANGE, ROBERT SCHLEY, JOHN SEED, RICHARD SISK, KARL SPARKS, WAYNE STUART, MICHAEL TAUSIG, WALLY UPPER, M. ANNE WALKER, and WAYNE WEBB, employees of a public entity

Attorneys of Record: The Law Offices of Dennis J. Walsh

Defendant/Respondent KEENAN & ASSOCIATES

Attorneys of Record: Briskin, Latzanich & Pene

Defendants/Respondents RONALD C. RUUD, SHERRY G. GORDON, and LAW FIRM OF ATKINSON, ANDELSON, LOYA, RUUD & ROMO

LIST OF PARTIES – Continued

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Defendant/Respondent ROY B. MASON

Attorneys of Record: Shea Stokes

Defendant/Respondent ROYCE LAPP

Attorneys of Record: Gilbert, Kelly, Crowley & Jennett

Defendants/Respondents KAREN SUE GROSZ and PHIL HARTLEY

Attorneys of Record: Office of the Attorney General of the State of California

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PETITION FOR WRIT OF CERTIORARI

Plaintiff/Appellant and Petitioner Anthony G. Vasek (hereinafter "Vasek") respectfully requests that a writ of certiorari issue to review the opinion filed on March 10, 2006, by the California Court of Appeal, Fourth Appellate District, Division Two, in the above-entitled case.

DECISIONS BELOW

Anthony G. Vasek v. Mt. San Jacinto College District et al., Unpublished Opinion, California Court of Appeal, Fourth Appellate District, Division Two, Master Case No. E033583, filed March 10, 2006, reprinted in the Appendix (App. 1-16).

Anthony G. Vasek v. Mt. San Jacinto College District et al., Unpublished Orders of Dismissal and Unpublished Judgment, California Superior Court of Riverside County, Case No. 254638, filed February 14, 2003, March 3, 2003, March 28, 2003, September 9, 2003, January 13, 2004, reprinted in the Appendix (App. 17-31).

Anthony G. Vasek v. Mt. San Jacinto College District et al., Unpublished Order Denying Petition for Review, Supreme Court of California, Case No. S142627, filed June 14, 2006, reprinted in the Appendix (App. 32).

Anthony G. Vasek v. Mt. San Jacinto College District et al., Unpublished Order Reinstating Missing Defendants, California Court of Appeal, Fourth Appellate District, Division Two, Master Case No. E017343, filed July 25, 2002, reprinted in the Appendix (App. 119-120).

BASIS FOR THIS COURT'S JURISDICTION

Ignoring an existing U.S. Supreme Court opinion and certain provisions of the U.S. Constitution, the state trial court made demands of Vasek and issued rulings against Vasek that interfered with and frustrated Vasek's federal rights. The ensuing dismissals violated not only the Supremacy Clause of the U.S. Constitution but also the Fourteenth Amendment's Equal Protection Clause. The California Court of Appeal affirmed the trial court's dismissals and upheld the previous grant of state immunity to Respondent District. On January 16, 2002, the Supreme Court of California denied Vasek's petition for review. This Court, therefore, now possesses jurisdiction under 28 U.S.C. §1257(a).

APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States, Article VI, Supremacy Clause:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be Supreme Law of the land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any state to the contrary notwithstanding.

Constitution of the United States, Amendment XI, State Immunity Clause:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity,

> commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Constitution of the United States, Amendment XIV, Equal Protection Clause:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

STATEMENT OF THE CASE AND FACTS

It all started some seventeen years ago when Vasek informed the Mt. San Jacinto Community College administration and its board of trustees that the College's catalog contained a serious misrepresentation. Rather than correct the misrepresentation, the College took retaliatory measures against Vasek. Vasek brought suit in state court, the trial court dismissed the action, Vasek began the appeal process, and the College brought 40 trumped-up charges of dismissal against him.

Vasek was exonerated of all charges in a trial that encompassed 7 full days during which 18 witnesses testified and nearly 300 documents were entered into

evidence. (App. 33-45; E033583 CT[1] 356-364.) Then on October 4, 2001, in a 72-page opinion containing 153 footnotes, the state appellate court reversed the dismissal of 40 defendants in Vasek's civil suit, awarded costs on appeal to Vasek, and remanded the case for trial. (App. 48-49; Opinion, Related Appeal No. E017343, pp. 71-72.)

Unbeknownst to Vasek, while said appeal was still pending, the law firm of Walsh & Declues sent to a clerk of the state appellate court a letter filed April 27, 2000, which *without leave of court* shortened the list of respondents represented by Walsh & Declues. (App. 85-86; E033583 CT 1937.) Based on said letter, the clerks of the appellate and trial courts mistakenly reduced the number of defendants remanded to the trial court. The trial court record of actions shows that the Law Offices of Dennis J. Walsh, an entity separate from Walsh & Declues, then filed substitutions of attorney (substituting the Law Offices of Dennis J. Walsh for the law firm Walsh & Declues) for only 8 of the 32 District Defendants remanded for trial. The 8 defendants were: Mt. San Jacinto College District, Eugene V. Kadow, Kelly J. Roberts, M. Anne Walker, Michael R. Tausig, Wally Upper, Karl Sparks, and Lawrence Barkley. (E033583 CT 2246-2299.)

The sum total of these events led the trial court to believe that the balance of the defendants – *i.e.*, the "missing defendants" – had been dismissed from the case by the appellate court. Vasek became aware of the April 27 letter's existence on May 10, 2002, and immediately informed the trial court of its mistake. Vasek's words,

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[1] CT and RT refer to the clerk's and reporter's transcripts, respectively.

however, fell on deaf ears. Vasek therefore filed in the state appellate court a motion to recall the appellate court's remittitur for the purpose of making clear that the appellate court did indeed intend to have the missing defendants continue as party defendants in the within remanded action. In that motion, Vasek identified the missing defendants by name and enumerated the reasons why their absence from the suit on remand was prejudicial to Vasek. (App. 50-64.)

Vasek then filed a motion in the trial court asking it to stay all proceedings until the matter of the missing defendants was resolved. (App. 65-98; E033583 CT 207-255.) Instead of helping to rectify the mistake, the Law Offices of Dennis J. Walsh opposed the motion, claiming that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action." (App. 100; E033583 CT 320-321.) Defendant Mason chimed in with an opposition that stated:

> "If VASEK wishes to add parties to this action, he has a remedy in the form of a motion for leave to file an amended complaint. See, CCP section 473(a). If VASEK convinces this Court that an amendment is proper, then an amendment can be permitted. *Otherwise, VASEK will have to litigate this matter on the terms and with the parties as set forth.*" (App. 111; E033583 CT 330-339; emphasis is added.)

The trial court agreed with the defendants, denied Vasek's motion, and imposed a $750 sanction upon Vasek for his having revisited the issue of the "missing" defendants – an issue that the trial court considered improperly raised and "silly." The trial court then continued to deem the missing

defendants as having been dismissed from the case on remand.

Vasek thereupon filed a supplemental letter memorandum of points and authorities in the state appellate court, informing it of the latest developments at the trial court level. In his supplemental letter memorandum of points and authorities, Vasek made the following argument:

> *"Vasek cannot be required to first go through the time and expense of filing a motion pursuant to CCP §473(a) – and the possibility of having to appeal an adverse ruling – in order to obtain something which he can,* ***and does demand, as of right.***" (App. 114-115.)

On July 25, 2002, the state appellate court issued an order stating that the individuals in question "*may no longer* be considered dismissed from the case" and that the appellate court's previous reversal "*entitles* plaintiff to proceed against them in the superior court." (App. 120; E033583 Suppl. CT 944-945; emphases are added.)

While Vasek was awaiting the appellate court's decision on the matter of the missing defendants, Vasek filed an 8th amended complaint, his first since remand, pursuant to leave granted by the trial court. Vasek's 8th amended complaint – filed one week before the appellate court's announcement that the missing defendants may no longer be considered dismissed from the case – included the missing defendants in a way that Vasek believes did not violate the trial court's order granting him leave to amend. Defendants, however, filed demurrers and motions to strike, arguing that Vasek had exceeded the scope of the trial court's order by including the missing defendants.

Despite the fact that the appellate court had issued, by now, its order stating that the missing defendants may no longer be considered dismissed from the case, the trial court nevertheless granted defendants' demurrers and motions to strike, imposed upon Vasek sanctions totaling $1400 for having included the missing defendants, granted Vasek leave to file a 9th amended complaint with the *proviso* that Vasek not include the missing defendants, and threatened further sanctions if he did include them. (App. 122-124; E033583 RT 108-110.) Caught between a rock and a hard place, Vasek opted to stand on his 8th amended complaint, confident that he would prevail on appeal.

Upon receiving the appellate court's order stating that the missing defendants may no longer be considered dismissed from the case, Vasek had also filed in the trial court a motion to strike all of defendants' prior papers filed in the trial court and to vacate all trial court orders associated therewith based on the appellate court's ruling with regard to the missing defendants. Said motion argued that the trial court's refusal to recognize certain individuals as parties defendant on remand (and opposing counsel's concomitant failure to serve papers on said defendants, especially papers related to discovery) was prejudicial to Vasek's interests and resulted in Vasek's loss of substantial rights. (App. 125-134; E033583 CT 1064-1072.) The trial court, however, denied Vasek's motion and ultimately signed orders of dismissal as to all parties defendant. (App. 17-31; E033583 CT 2057-2059, 2103-2105, 2108-2109, 2114-2115, E033583 Suppl. CT 1050, E035087 CT 155-156.)

Within eight days of receiving the appellate court's order stating that the missing defendants may no longer be considered dismissed from the case, Vasek had also

filed in the trial court a memorandum of costs on appeal. The trial court, however, did not allow Vasek to recoup these costs on the grounds that Vasek's memorandum of costs was not timely filed.

Vasek filed a timely appeal that noted the absence, on remand, of necessary parties defendant – occasioned by errors made at the appellate and trial court levels – and the resulting detrimental impact on Vasek's ability to pursue his suit against these missing defendants and their co-defendants. The appellate panel issued a tentative opinion. The tentative opinion was fraught with significant errors which Vasek sought to address but to no avail.

The appellate rules allotted Vasek, at oral argument, only 15 minutes in which to present his objections *and* reply to his opponents' arguments; by contrast, the same appellate rules allowed his opponents to collectively demand as much as one and one-half hours to present their side. To demonstrate how fundamentally flawed the tentative opinion was, Vasek needed to reference and discuss more than 50 passages in the record; so, he petitioned for more time to present his side, but the appellate court denied his request. In the alternative, he petitioned the appellate court for leave to submit a supplemental brief, but the appellate court ignored that request. (App. 135-138.) In the end, the tentative opinion became the final decision of the court.

The opinion begins with a discussion of the missing defendants. "As a preliminary matter," the opinion states, "we address Vasek's persistent claim that some individual defendants, *whom Vasek does not identify by name*, were incorrectly omitted or dismissed by the trial court from the case." (Emphasis is added.) The opinion then claims that Vasek had "not presented a coherent explanation of who

are the missing parties, when they were dismissed or omitted from the case, and why this was wrong." (App. 6.)

These statements, however, contradict facts known to at least one of the members of the appellate panel reviewing this case – *i.e.*, the Presiding Justice – who had penned the 7/25/02 appellate order that responded to Vasek's motion to recall the appellate court's remittitur. As this petition has already pointed out, in that motion Vasek had identified the missing defendants by name, enumerated the reasons why their absence from the suit on remand was prejudicial to Vasek, and asked the appellate court to recall its remittitur for the purpose of making clear that the appellate court did indeed intend to have the missing defendants continue as party defendants in the within remanded action. (See again App. 50-64.) These points were again made in Vasek's appellate briefs.

More specifically, Vasek had listed these missing parties *by name* in his Motion for Continuance & Request for Sanctions (*cf.*, App. 65; E033583 CT 207) which he had referenced in his opening brief (*cf.*, App. 151-152). He had also identified the missing parties by referencing in his opening brief (*cf.*, App. 154) the Walsh & Declues letter of April 27, 2000 (*cf.*, App. 85-86), and by referencing in his reply brief (*cf.*, App. 165) the client list provided in an opposition filed by the Law Offices of Dennis J. Walsh on July 8, 2002 (*cf.*, App. 99).

The opinion's statement that Vasek had not presented a coherent explanation of "when [the missing parties] were dismissed or omitted from the case, and why this was wrong" is just as disingenuous. As this petition has already stated, at least one of the members of the appellate panel reviewing this case – *i.e.*, the Presiding Justice –

had been aware of all of the circumstances surrounding the missing parties; for, he had penned the 7/25/02 appellate order declaring that the missing parties "*may no longer* be considered dismissed from the case" and that the appellate court's previous reversal "*entitles* plaintiff to proceed against them in the superior court." (App. 120; emphases are added.)

Moreover, in his opening brief (*cf.*, App. 149-151), Vasek had referred to the trial court's 5/1/02 Notice of Status Conference. Said notice contained a statement indicating that all other parties had been notified. Vasek had explained in his opening brief that, when he called the clerk of the trial court to ascertain the addresses used by the trial court to notify the parties who had not substituted the Law Offices of Dennis J. Walsh for Walsh & Declues, the clerk informed him that said defendants *were listed by the trial court's computer as having been dismissed* and that, because these defendants were considered by the trial court to be dismissed on remand, they had not been sent notices by the clerk's office. (See also App. 65-98; E033583 CT 207-255.)

And as to why it was wrong to omit the missing parties from the case, Vasek had addressed that question in his opening brief (*cf.*, App. 151-153) and in his reply brief (*cf.*, App. 165-166). There, he had reiterated what he had stated in his earlier motion to the appellate court – *i.e.*, that he was entitled, *as of right*, to have the missing parties appear in the trial court as proper defendants to answer Vasek's complaint on remand – and he had then quoted the Presiding Justice's responding order of July 25, 2002.

In their opinion, however, the Presiding Justice and his fellow panel members distorted the facts by claiming that Vasek was seeking to include "additional" defendants – *i.e.*, ones over and above those originally named in the suit. (App. 7.) This rendition by the Presiding Justice and his fellow panel members contradicts the contents of the documents referenced in this petition, including the Presiding Justice's own July 25 order. These documents show that Vasek never claimed – and the 7/25/02 order never sought to establish – that there were "*additional* missing defendants who should be included in the lawsuit," as the panel contends. (Emphasis is added.)

Vasek's motion had asked the appellate court to make clear to the trial court that *all* of the *originally* named district defendants were intended by the appellate court to be parties defendant in the remanded action. (See again App. 51-52.) When he ruled, in his responding 7/25/02 order, that the individuals in question "*may no longer* be considered dismissed from the case," the Presiding Justice had acknowledged that many of the originally named defendants had been incorrectly considered by the trial court to have been dismissed from the case. (App. 120; emphasis is added.) In his 7/25/02 order, the Presiding Justice had acknowledged further that it was wrong for these individuals to be omitted from the case because the appellate court's previous reversal "*entitles* plaintiff to proceed against them in the superior court." (Emphasis is added.) Nowhere in their opinion do the Presiding Justice and his fellow panel members resolve the inconsistencies between their rendition of the facts and the facts emanating from the above-referenced documents.

Based upon their unsupported contention that Vasek had sought to include "additional" defendants beyond

those originally named in the suit, the Presiding Justice and his fellow panel members concluded that "Vasek has offered no legal authority to support his contention that he could not proceed with his lawsuit against the 35 named defendants, who are respondents in this appeal, absent other 'disenfranchised' defendants." (App. 7.) The panel drew that conclusion even though it was clear that Vasek had *never* claimed there were *other* disenfranchised defendants that should be included in the lawsuit *in addition to* the 35 named defendants. Based upon said false premise, then, the panel proceeded to "deem this issue lacking in merit, unsupported, and waived on appeal." (App. 7.) That, in turn, permitted the panel to dispense with additional issues of merit. "Our resolution of this issue, also dispenses with Vasek's argument the trial court should have granted his motions to strike defendants' pleadings and to vacate court orders based on his contention there were other necessary defendants." (App. 7.)

Having thus expurgated Vasek's valid issues on appeal, the panel ruled that Vasek had defeated his own claims through procedural error by failing to amend his complaint after issuance of the remittitur from the previous appeal, by filing an amended complaint without leave of court except as to Grosz and Hartley, and by refusing to amend his ultimate pleading after being granted leave to amend. (App. 3-4.) Then, declaring that Vasek had offered "no credible argument" as to why sanctions were an abuse of discretion under California Code of Civil Procedure section 128.5, the panel found that "Vasek's filing of the [Eighth Amended Complaint] was a blatant example of an action that was in bad faith, frivolous, or both," and held that the trial court acted properly in imposing sanctions.

(App. 15.) The panel also declared Vasek's memorandum of costs on appeal to have been filed in an untimely fashion. (App. 10.) It did this without giving any consideration to the fact that it was impossible for Vasek to claim costs on appeal against a group of individuals – and to correctly allocate those costs amongst those individuals – when a large number of those individuals were deemed by the trial court to have been dismissed on appeal.

The panel claimed its review was "hampered by Vasek, acting in propria persona," and accused him of "relying upon ad hominem attacks and other unseemly rhetorical devices, rather than accurate citation to the record and reasoned legal argument." (App. 4.) The panel made these claims and accusations even though Vasek's briefs had addressed matters that were *germane* to the case and supported by *facts* taken directly from the record on appeal. Quoting Charles Dickens in *Bleak House*, the panel closed by describing Vasek's case as an "interminable piece of litigation" that "still drags it dreary length before the Court, perennially hopeless." (App. 15.) In making that remark, the panel ignored the dominant roles opposing counsel and the appellate and trial courts played in creating the chaos that Vasek had predicted and warned against from the very beginning. (See App. 70-73.)

Recognizing the futility and danger of challenging a recalcitrant appellate panel that might choose to sanction him further, Vasek avoided further confrontation and filed in the Supreme Court of California a timely petition for review of the appellate panel's opinion in Appeal No. E033583, including the panel's stated refusal to abandon its continued application of *Kirchmann v. Lake Elsinore Unified School District* (2000), 83 Cal.App.4th 1098, 100 Cal.Rptr.2d 289, 147 Ed. Law Rep. 224 [cert. denied], to

the Vasek case. In an order filed on June 14, 2006, the Supreme Court of California denied Vasek's petition for review. (App. 32.)

ARGUMENTS IN SUPPORT OF REVIEW

I. THE STATE APPELLATE COURT NOT ONLY UPHELD REQUIREMENTS THAT VIOLATED THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION BUT, IN UPHOLDING SAID REQUIREMENTS, THE STATE APPELLATE COURT ALSO FAILED TO FOLLOW AN EXISTING OPINION OF THIS SUPREME COURT.

The Supremacy Clause of the U.S. Constitution establishes the U.S. Constitution and the laws of the United States as the Supreme Law of the land; and the judges in every state are bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding. In the instant case, the state appellate court's deviation from established federal law was significant.

The state appellate court's opinion states that "Vasek should have amended his complaint after issuance of the remittitur on appeal" – *i.e.*, by February 22, 2002, pursuant to California Code of Civil Procedure §472(b). (App. 9.) The opinion also claims that, in order to be timely, "the cost memorandum should have been filed by March 4, 2002." (App. 10.) These requirements, however, not only deprived Vasek of his rights under the equal protection clause of the U.S. Constitution, but also imposed upon Vasek the type of outcome-determinative result that the U.S. Supreme Court prohibited in *Felder v. Casey* (1988), 487 U.S. 131 at 147. (States cannot "place conditions on

the vindication of a federal right.") Vasek's instant argument for review is three-pronged.

First of all, immediately upon the California Supreme Court's denial of Vasek's petition to review the grant of state immunity in the previous appeal (*i.e.*, Appeal No. E017343), the appellate court issued its remittitur and refused to grant Vasek's motion to recall the remittitur so that he could petition the U.S. Supreme Court for review of the same issue (*cf.*, App. 167-168); and when Vasek asked the trial court to stay proceedings pending the outcome of his petition to the U.S. Supreme Court, the trial court denied Vasek's request. Though Vasek could not *demand* review by the U.S. Supreme Court *as of right*, he could and did demand to exercise his *right to petition* for such review, under the equal protection clause, without suffering adverse consequences in the California courts. These adverse consequences included uncertainty not only as to the issues at bar but also as to the composition of the parties defendant.

Secondly, while in the last stages of preparing the appendix to his petition for a writ of certiorari (filed in this Supreme Court on April 3, 2002), Vasek noticed for the first time that an entire section of the appellate court's opinion appeared to have been omitted.[2] Vasek therefore filed a renewed motion to recall the appellate court's

[2] Because there was no time for Vasek to move the appellate court to rectify its error of omission prior to the expiration of the time period in which Vasek was required to file his petition to this Supreme Court, Vasek submitted his petition – containing the appended but incomplete opinion – with a letter dutifully informing this Court of the discovered omission. The resulting uncertainty may have been a factor in the Supreme Court's decision to deny certiorari on June 3, 2002.

remittitur on the grounds that Vasek could not proceed in the trial court until the complete version of the opinion was made available. On May 1, 2002, the appellate court denied Vasek's motion; but in its order of denial, the appellate court acknowledged that the released version of the official opinion did contain a typographical error. (App. 169-170.) Clearly, Vasek's right to equal protection under the law was violated by the requirement that he file an amended complaint on February 22, 2002, more than two months before the contents of the appellate court's decision were communicated to him definitively. Just as clearly, the requirement imposed upon Vasek placed conditions on the vindication of a federal right in a manner that violated the holding in *Felder*.

Thirdly, on May 10, 2002, a few days after the appellate court definitively disclosed what its opinion actually stated, Vasek discovered that many of the District Defendants against whom he was *entitled* to proceed on remand were deemed by the trial court to be dismissed from the case. It was later determined that this confusion originated with none other than District Defendants' own attorneys; and instead of rectifying the mistake, these same attorneys steadfastly claimed that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action." (App. 100; E033583 CT 320-321.) The matter was not resolved until the appellate court issued its 7/25/02 order. Clearly, Vasek's right to equal protection under the law was violated by the requirement that he file an amended complaint on February 22, 2002, more than five months before the majority of defendants on remand were reinstated. Here again, the requirement imposed upon Vasek placed conditions on the vindication of a federal right in a manner that violated the holding in

Felder. Matters were exacerbated further when the trial court granted Vasek leave to amend but threatened him with further sanctions if he included the missing defendants in his newly amended complaint.

The same arguments apply to the filing of Vasek's memorandum of costs on appeal. Vasek could not allocate costs amongst the defendants until the missing defendants were reinstated in the suit. The filing of the memorandum of costs within eight days of the issuance of the 7/25/02 order cannot be viewed as anything but timely under the circumstances.

The state courts acted well outside the bounds of established law. This Supreme Court, therefore, should grant review to: 1) maintain and underscore the inalienability of the rights granted by the U.S. Constitution to every individual encompassed by it; 2) ensure conformation to the teachings of the U.S. Supreme Court; and 3) preserve the fundamental notions of ordered government.

II. THE STATE APPELLATE COURT MISAPPLIED THE STATE IMMUNITY CLAUSE OF THE ELEVENTH AMENDMENT TO THE U.S. CONSTITUTION.

In the previous appeal (*i.e.*, Appeal No. E017343), the state appellate court held that Vasek could state a valid 42 U.S.C. §1983 cause of action against all of the individual defendants named, the law firm representing the College District, and the College District's insurance broker. Based upon that holding, therefore, the appellate court reversed the trial court's orders dismissing the case as to said defendants. However, relying solely on its decision in *Kirchmann v. Lake Elsinore Unified School District, supra*,

the appellate court affirmed the trial court's judgment of dismissal based upon the trial court's order sustaining the College District's demurrer as to the District and its officials acting in their official capacities. (App. 48-49.)

In arguing that employees of state agencies acting in their official capacities are not suable persons for purposes of 42 U.S.C. §1983, District Defendants' brief in the previous appeal never mentioned the *Kirchmann* case but relied instead on a case that the appellate court determined was off point. In the previous appeal, therefore, Vasek had no opportunity to address in his reply brief the significant differences that exist between the *Kirchmann* and *Vasek* cases. And for its part, the appellate court never examined the specific circumstances of the *Vasek* case to determine whether there were any distinctions to be made between the *Vasek* and *Kirchmann* cases. The appellate court simply viewed the *Vasek* case "as a natural extension of our holding in *Kirchmann*." (App. 47-48; Opinion, Related Appeal No. E017343, pp. 24-26.) Because the facts of the *Vasek* case suggest that significant differences do indeed exist between the *Kirchmann* and *Vasek* cases, and because the matter had never been properly briefed in the previous appeal, Vasek asked the appellate panel in the instant appeal to overturn the appellate court's previous affirmation of the trial court's grant of state immunity to the College District.

In his most recent opening brief, Vasek showed how the State of California had waived the tort immunity of its school districts and explicitly permitted them to be sued in state court on a tort claim whose source is a congressional

enactment,[3] how the appellate court had improperly applied the *Kirchmann* case to matters affecting *academic discourse*, and how immunizing the College District "as an arm of the state," within the context of an activity directly related to the process of education, would rupture the seal that has insulated the American people, since the inception of our democracy, from the dangers of state indoctrination practices. (App. 155-161.) Without addressing any of these points, the appellate panel decided the matter with one dismissive sentence: "There is no cognizable reason to abandon our previous decision on this issue." (App. 13.)

In 2001, Norma Kirchmann petitioned this Supreme Court to review the decision in *Kirchmann*, and this Court denied her request. Because the state appellate panel relied entirely on *Kirchmann* in deciding the immunity issue in the *Vasek* case, Vasek must address the *Kirchmann* decision in order to explain to this Court the fundamental distinctions between the *Kirchmann* and *Vasek* cases. As hereinafter more fully appears, Vasek's instant petition advances compelling reasons for review, based on a totally different set of circumstances and legal principles than those advanced by Norma Kirchmann in her earlier petition for review.

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[3] *Thompson v. City of Lake Elsinore* (1993), 18 Cal.App.4th 49 at 61-62; Gov. Code §815 (a public entity is not liable for an injury *except as provided by statute*); and Gov. Code §811.8 (*statute* is an act adopted by the Legislature of this State *or by the U.S. Congress*).

A. The *Vasek* Ruling Is a Groundbreaking Decision that Presents a Public Policy Question of Immense Import.

While state involvement in the *funding and operation* of a public education system may be necessary and even encouraged, no one disputes the fact that, under our system of government, a state agency is barred from marshalling its resources and powers to forcibly impose beliefs upon unwilling recipients. Indeed, history has shown that, whenever a state was given powers to *impose* beliefs on its citizenry, it has invariably led to indoctrination and repression rather than education.

In the *Vasek* case, the College District misrepresented its vocational drafting program as engineering. The misrepresentation was brought to the District's attention by Vasek. Rather than correct the misrepresentation, the District, beginning with its disciplinary memorandum of April 1989 and for years thereafter, did everything in its power to coerce Vasek into acknowledging that the coursework outlined in the District's vocational drafting program was an adequate substitute for the first two years of an engineering curriculum – something which Vasek knew to be untrue, was unwilling to accept, and refused to endorse. In response to Vasek's intransigence, the District brought more than 40 trumped-up charges of dismissal against Vasek.

The administrative judge who presided over Vasek's trial found that Vasek's motives "were praiseworthy and any disciplinary action against him would have an adverse impact or chilling effect upon his free exercise of constitutional rights *as well as those of other certified persons.*" (App. 44; E033583 CT 363; emphasis is added.) Thus, the issue presented to this Court impacts *all* fields of academic

and professional endeavor, and there is no limit to the abuses that can emanate as a result of the *Vasek* decision if the *Vasek* decision is left undisturbed. After all, the College District had mustered all of its powers to coercively and heavy-handedly insist (under threat of dismissal) that Vasek, through the normal channels of academic discourse, participate in the dissemination of false information regarding what constitutes "engineering." So, what's to prevent any public institution of higher education from amassing the state's resources against some other relatively powerless faculty member to similarly coerce that faculty member into promulgating false teachings regarding genetic differences, religious differences, racial differences, etc.?

This Supreme Court should grant review to determine whether the decision, taken by the California Court of Appeal to categorically immunize every public educational institution in California as an "arm of the state," reflects sound public policy.

B. The *Vasek* Case Presents the Ideal Vehicle for Reviewing This Area of the Law.

In *Howlett v. Rose* (1990), 496 U.S. 356, and *Kirchmann v. Lake Elsinore Unified School District*, *supra*, this Court had an opportunity to decide definitively whether a school district is a "person" under section 1983 and declined to do so. Neither case was the ideal vehicle by which to consider the question because neither dealt with the fundamental workings of an educational institution but instead involved issues that were, at best, *tangential* to the workings of an educational institution. The *Vasek* case, on the other hand, offers this Court the ideal vehicle

by which to consider the question because the *Vasek* case deals directly with what is at the heart of every academic institution – *i.e.*, a faculty member's constitutionally protected right to engage in academic discourse and debate *sans* coercive state interference. Vasek urges this Court to grant review in this case so that the issue of whether a public educational institution is a "person" under section 1983 can be decided definitively, once and for all.

C. The *Kirchmann* and *Vasek* Rulings Are Groundbreaking Decisions that Depart Significantly from Other Federal Decisions.

"To our knowledge, no previous decision has considered the precise question here, whether a California school district should be considered a local governmental body subject to suit under section 1983, or an instrumentality of the state exempt from suit." (*Kirchmann v. Lake Elsinore Unified School District, supra* at 1101.)

1. The *Kirchmann* and *Vasek* Decisions Conflict with the U.S. Supreme Court's Holding That Section 1983 Exemptions Based on a State's Own Legal Heritage Are Impermissible.

Citing *Mt. Healthy City Board of Education v. Doyle* (1977), 429 U.S. 274, the U.S. Supreme Court stated in *Missouri v. Jenkins* (1990), 495 U.S. 33 at 56, fn. 20:

> "[T]he Eleventh Amendment . . . does not afford local school boards . . . immunity from suit. . . . "

The *Kirchmann* court admitted "that most courts after *Mt. Healthy* have declined to extend Eleventh Amendment

immunity to local school districts and boards." The *Kirchmann* court admitted further that, after *Missouri v. Jenkins*, "[l]ower federal courts, and state courts, have reached the same conclusion." (*Kirchmann v. Lake Elsinore Unified School District, supra* at 1106-1107.) Nevertheless, relying entirely upon California's legislative and judicial heritage, the state appellate court in the *Kirchmann* and *Vasek* cases chose to reach an *opposite* conclusion, extending Eleventh Amendment immunity to California school districts and boards.

To the extent that the state appellate court's decision reflects a substantive disagreement with the extent to which governmental entities should be held liable for their constitutional violations, that disagreement cannot override the dictates of federal law. (*Howlett v. Rose* (1990), *supra* at 377-378.) "Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action." (*Wilson v. Garcia* (1985), 471 U.S. 261 at 269.) In the end, the *Howlett* court concluded at 383:

> " . . . as to persons that Congress subjected to liability, individual States may not exempt such persons from federal liability by relying on their own common-law heritage. If we were to uphold the immunity claim in this case . . . States would then be free to nullify for their own people the legislative decisions that Congress has made on behalf of all the people."

This Supreme Court should grant review to determine whether the California Court of Appeal's reasoning in the *Kirchmann* and *Vasek* cases is consistent with the principles enunciated by this Court.

2. The *Kirchmann* and *Vasek* Decisions Conflict with the U.S. Tenth Circuit Court of Appeals' Decision in a Similar Case.

In *Duke v. Grady Municipal Schools* (10th Cir. 1997), 127 F.3d 972, the Tenth Circuit Court addressed the identical question raised in *Kirchmann*. However, despite the fact that the school systems described in *Duke* and *Kirchmann* are very similar and that the factors considered by the two courts were essentially the same, the two courts nevertheless reached diametrically different conclusions. The *Duke* court stated that "a clear and workable test in this very confused area of the law" is desperately needed. (*Duke v. Grady Municipal Schools, supra* at 981.)

In trying to decide whether a public educational institution is functioning as an arm of the state, the courts currently rely primarily on an examination of the institution's potential legal liability and the concomitant impact that such exposure would have on the state's treasury. The *Vasek* case suggests that this approach may be too narrow and begs the question: Should the protection of the state treasury ever have precedence over academic freedom and the intellectual autonomy of a public educational institution? A close examination of the circumstances in the *Vasek* case suggests the answer is no.

The current confusion can be abated if the standards presently employed by the courts are reviewed by this Court within the context of, and the parameters presented by, the *Vasek* case.

3. The *Vasek* Decision Conflicts with the U.S. Ninth Circuit Court of Appeals' Holding That a Grant of Immunity in One Case Does Not Necessarily Translate into a Grant of Immunity in Another Case Just Because the Entity Involved Is Similar or Even Identical.

In *Doe v. Lawrence Livermore National Laboratory* (9th Cir. 1995), 65 F.3d 771, the Ninth Circuit Court held that a grant of immunity in one case does not necessarily translate into a grant of immunity in another case just because the entity involved is similar or even identical. Rather, a separate analysis must be performed in each case to determine whether a grant of immunity is appropriate. In *Doe*, the Ninth Circuit Court specifically found:

> " . . . that the University is not protected by the Eleventh Amendment . . . because the University, *in this particular instance*, is not functioning as an arm of the state. Because we hold that the University is not an arm of the state *in this instance*, it is a 'person' under section 1983." (*Ibid.* at 776; emphasis is added.)

By contrast, the California Court of Appeal applied *Kirchmann* to the *Vasek* case as a blanket rule without regard to any distinctions that might exist between the two cases.

The *Vasek* case is the first in California appellate history to allege a section 1983 cause of action based upon administrative interference with *a faculty member's ability to engage in the normal academic discourse that is absolutely fundamental to the principal function of an educational institution.* The *Kirchmann* case, on the other hand, involved no such fundamental issues but instead dealt

with issues that were, at best, tangential to the workings of an educational institution. Norma Kirchmann was a *secretary* who was suspended for 30 days after she anonymously communicated to bidders her view that a *conflict of interest existed in the bidder selection process.*

Vasek submits that, even if *arguendo* the *Kirchmann* case were deemed to have been properly decided under the circumstances presented there, those circumstances differ vastly from those presented in the *Vasek* case. Vasek submits that a properly conducted analysis of the differences between the *Vasek* and *Kirchmann* cases would have demonstrated that the College District in the *Vasek* case is not protected by the Eleventh Amendment because the District, *in that particular instance*, was not functioning as an arm of the state; and so, *in that particular instance*, the District was a "person" under section 1983.

This Supreme Court should grant review to resolve the conflict between the decision in *Vasek* and the decision rendered by the Ninth Circuit Court in *Doe v. Lawrence Livermore Laboratory, supra.*

REPRESENTATION BY COUNSEL

In the event this petition is granted, appropriate legal counsel will be retained to argue this case before this Court. Vasek is presently in the process of seeking such legal counsel.

Respectfully submitted,

ANTHONY G. VASEK,
Petitioner In Propria Persona

APPENDIX

APPENDIX

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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ANTHONY G. VASEK,

Plaintiff and Appellant,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Defendants and Respondents.

E033583/E035087
(Super.Ct.No. 254638)
OPINION
(Filed Mar. 10, 2006)

APPEAL from the Superior Court of Riverside County. Dallas Holmes and Charles D. Field, Judges. Affirmed.

Anthony G. Vasek, in pro. per., for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Jacob A. Appelsmith, Senior Assistant Attorney General, Silvia M. Diaz, Lead Supervising Deputy Attorney General, and Dana T. Cartozian, Deputy Attorney General, for Defendants and Respondents Karen Sue Grosz and I[illegible]il Hartley.

Atkinson, Andelson, Loya, Ruud & Romo, Sherry G. Gordon and John W. Dietrich for Defendants and Respondents Atkinson, Andelson, Loya, Ruud & Romo, Ronald C. Ruud, Sherry G. Gordon and Steven Atkinson.

Briskin, Latzanich & Pene and Katherine B. Pene for Defendant and Respondent Keenan & Associates.

Shea Stokes & Carter, Maria C. Roberts and Shirley A. Gauvin for Defendant and Respondent Roy B. Mason.

Law Offices of Dennis J. Walsh, Dennis J. Walsh and George E. Ordonez for Defendants and Respondents Mt. San Jacinto Community College District et al.

Gilbert, Kelly, Crowley & Jennett, Barbara J. Mandell and Lyndon H. Hong for Defendant and Respondent Royce Lapp.

1. Introduction[1]

Anthony Vasek appeals from a judgment of dismissal entered after he declined to amend his eighth amended complaint and from a summary judgment entered in favor of defendant Royce Lapp. Vasek, a tenured instructor at Mt. San Jacinto Community College, seeks recovery for an alleged conspiracy against him beginning in April 1989

[1] Vasek filed a request for judicial notice on December 20, 2004. Item A, located at pages one through 16 and 45 through 63 of the appendix to Vasek's request, and Item E appear to have been part of the trial court record below. We deem these documents part of the appellate record by augmentation. (Cal. Rules of Court, rule 12, subd.(a).) We deny the request for judicial notice of Item B, the bankruptcy pleadings, pages 17 through 44 of the appendix. (Evid. Code, § 452, subd. (d).) Item C is already part of the appellate record. Item D is this court's own records.

and continuing until 2004 and beyond. This case is now in its twelfth year of litigation.

Defendants and respondents are the Mt. San Jacinto College District and 26 individual defendants[2] (College District and District Defendants); the law firm of Atkinson, Andelson, Loya, Ruud & Romo, and its individual members, Ronald Ruud and Sherry Gordon (the Attorneys); Keenan & Associates; and four other individuals, Karen Sue Grosz, Phil Hartley, Roy B. Mason, and Lapp.[3]

In a previous opinion (E017343), this court addressed the viability of Vasek's claims. We reversed the trial court's order sustaining the demurrer of the District Defendants (including Mason), acting in their personal capacities; the trial court's order sustaining Attorneys' demurrer; the trial court's order sustaining Keenan's demurrer; the trial court's order granting summary judgment as to individual defendants, Grosz and Hartley; and the trial court's order granting Lapp's motion to strike under Code of Civil Procedure section 425.16.

Here Vasek has defeated his own claims through procedural error. By failing to amend his complaint after issuance of the remittitur from the previous appeal, by

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[2] Bobby Avila, Lawrence Barkley, David Bookin, Claire Broyles, Bernard J. Carrigan, William Farrell, Elgin Hushbeck, Eugene Kadow, Marcia Krull, Richard Lowe, Anne Motte, John Motte, Steve Narin, Kazi Nizamuddin, Shahla Razavi, Kelly Roberts, Robert G. Rockwell, Gwendolyn Schlange, Robert Schley, John Seed, Richard Sisk, Karl Sparks, Wayne Stuart, Michael Tuasig, Wally Upper, and M. Anne Walker.

[3] In our previous opinion, Mason and Lapp were included among the 28 District Defendants, although Lapp had separate representation. In the present appeal, Mason and Lapp appear separately as respondents from the other 26 District Defendants.

filing an amended complaint without leave of court except as to Grosz and Hartley, and by refusing to amend his ultimate pleading after being granted leave to amend, Vasek has finally reached a procedural terminus.

Vasek raises a multitude of issues that we will consider in turn according to the affected party. Our review is hampered by Vasek, acting in propria persona, failing to follow the rules and conventions of appellate procedure: "This court is not inclined to act as counsel for . . . any appellant and furnish a legal argument as to how the trial court's rulings . . . constituted an abuse of discretion." (*In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164; *Dills v. Redwoods Assocs. Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1.) We further deplore the rhetoric Vasek employs, relying upon ad hominem attacks and other unseemly rhetorical devices, rather than accurate citation to the record and reasoned legal argument.

2. Factual and Procedural Background

We have discussed the basic facts of this action in the earlier appellate opinion, which we incorporate by reference. Briefly, the College District employed Vasek as an engineering and mathematics instructor in 1987. After some years of conflict between Vasek and the College District about curriculum and Vasek's qualifications, in August 1993, the College District assigned Vasek to teach remedial mathematics. The chief areas of conflict involved whether the vocational drafting program was a transfer program for engineering and whether Vasek was qualified to teach vocational drafting. In August 1994, Vasek filed the original complaint. After various proceedings, Vasek filed his seventh amended complaint in August 1996. After

a final disposition, the trial court dismissed the case. Vasek appealed in March 1997.

In the meantime, a notice to correct deficiencies was issued to Vasek in November 1995 (Ed. Code, §§ 87732 and 87734) and a notice of intent to dismiss Vasek was issued in June 1996. An administrative hearing was conducted in 1997 and, in August 1997, the administrative law judge decided in favor of Vasek and dismissed the statement of charges and accusation against him.

After the previous appeal was decided in October 2001, the case was remanded to the trial court for further proceedings. Vasek did not file an amended complaint within 30 days, as required by Code of Civil Procedure section 472, subdivision (b), after issuance of the remittitur on January 23, 2002.

In June 2002, the court granted a motion for judgment on the pleadings brought by Grosz and Hartley but granted Vasek leave to file an eighth amended complaint (EAC), "limited solely to addressing the pleading defect placed at issue by Grosz and Hartley's Motion for Judgment on the Pleadings."

Instead, when Vasek filed the EAC in July 2002, he presented new allegations against defendants, including that he had prevailed in the 1997 administrative hearing. The EAC contains two causes of action: one for violation of civil rights (42 U.S.C. § 1983); and a new cause of action for malicious prosecution of administrative proceedings, asserted against 10 District Defendants – Broyles, Kadow, Mason, Motte, Roberts, Rockwell, Rohrabacher, Schlange, Stuart, and Upper – and against the Attorneys. The EAC alleges that August 26, 1993, the date Vasek was demoted, was the date of his injury.

The College District and the District Defendants, the Attorneys, Keenan, Grosz and Hartley, and Mason filed motions to strike and demurrers to the EAC.

In November 2002, the court ordered the demurrers sustained and motions to strike granted with leave to amend. Subsequently, Vasek filed a waiver of leave to amend in which he declined to file a ninth amended complaint.

After the latter defendants filed separate motions to dismiss, the court dismissed the action as to them. Vasek appealed in April 2003.

In December 2003, the trial court granted Lapp's motion for summary judgment. Vasek appealed in January 2004.

3. The "Disenfranchised" Defendants

As a preliminary matter, we address Vasek's persistent claim that some individual defendants, whom Vasek does not identify by name, were incorrectly omitted or dismissed by the trial court from the case. Vasek has not presented a coherent explanation of who are the missing parties, when they were dismissed or omitted from the case, and why this was wrong.

His reliance on this court's order of July 25, 2002 is misplaced. In that order, we explained that, based on our previous opinion, Vasek could proceed against the individual District Defendants acting in their individual capacities if he amended his complaint. Our previous opinion affected 28 District Defendants, including Lapp who was represented separately. (EO17343, p. 3.) The present appeal involves the same 28 District Defendants, including Lapp

and Mason, both now represented separately. The appellate order of July 25, 2002, did not identify or establish there are additional missing defendants who should be included in the lawsuit. Meanwhile, Vasek acknowledges that all the named defendants are proper respondents. Vasek has offered no legal authority to support his contention that he could not proceed with his lawsuit against the 35 named defendants, who are respondents in this appeal, absent other "disenfranchised" defendants. Therefore, we deem this issue lacking merit, unsupported, and waived on appeal. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

Our resolution of this issue also dispenses with Vasek's argument the trial court should have granted his motions to strike defendants' pleadings and to vacate court orders based on his contention there were other necessary defendants.

4. Grosz and Hartley

Vasek sued Grosz in her capacity as a member of the Board of Governors for California Community Colleges. Vasek sued Hartley in his capacity as President of the Academic Senate for California Community Colleges. Vasek's specific allegations against Grosz and Hartley are that, in March 1990, they helped cancel an independent investigation by the Academic Senate of Vasek's grievances. But Vasek also alleges they had left their positions before September 1992. Vasek's injury was sustained in August 1993. The other acts Vasek specifies in his appellant's brief all occurred after August 1993.

Grosz and Hartley filed a demurrer to the EAC on the grounds that the section 1983 claim, the cause of action

directed against them, is time-barred because their only alleged involvement began in March 1990 and ended before September 1992, the beginning of the 1992-1993 academic year. So, a section 1983 claim filed in August 1994 based on an injury sustained in August 1993 was not timely under the then-applicable one-year statute of limitations. (*Knox v. Davis* (9th Cir. 2001) 260 F.3d 1009, 1012-1013; *Krupnick v. Duke Energy Morro Bay* (2004) 115 Cal.App.4th 1026, 1028-1030; Code Civ. Proc., §§ 340, subd. (3), and 335.1) We agree that, even if Grosz and Hartley's alleged conduct had continued from March 1990 until September 1992, there are no allegations supporting a timely section 1983 claim in the EAC against these two people based on a complaint filed in August 1994 for an injury sustained in August 1993 but continuing until 1997 and after.

Vasek argues that our previous opinion permitted him to amend his complaint to allege a continuing course of conduct, including an administrative disciplinary proceeding beginning in November 1995 and ending in August 1997. But it is a complete misinterpretation for Vasek to assert we "left the door wide open for Vasek to allege any and all wrongful conduct . . . including factual allegations that occurred after filing the first set of appeals" in March 1997. We offered no such *carte blanche* to Vasek.

Instead, our former opinion suggested Vasek might have been able to amend his section 1983 claim to include allegations of equal protection violations. (E017343, p. 21) We also determined that he had successfully alleged the elements of a section 1983 claim against some defendants. (E017343, pp. 23-24.) But we concluded the College District and the District Defendants, acting in their official capacity were immune from section 1983 liability, citing

Kirchmann v. Lake Elsinore Unified School District (2000) 83 Cal.App.4th 1098. (E017343, pp. 24-27.) As to Keenan, even though we overruled the order sustaining the demurrer, we opined amendment was still necessary to state a valid claim. (E017343, p. 53.)

In our last opinion, we noted it was possible to allege a continuing conspiracy. The facts would need to demonstrate the existence of a conspiracy; i.e. that coconspirators have knowledge of and intent to accomplish a planned objective. (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582.) But Vasek had to allege facts, not conclusions, showing a "'series of related acts, one or more of which falls within the limitations period.'" (E017343, p. 43, citing *Green v. Los Angeles County Superintendent* (1989) 883 F.2d 1472, 1480, overruled in *National R.R. Passenger Corp. v. Morgan* (2002) 536 U.S. 101, 114; *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 816.)[4] And, once an injury has occurred, "[m]ere continuance of a conspiracy beyond the date when injury or damage occurs does not extend the statute of limitations. [Citations.] To establish a continuing violation, continued unlawful acts must be demonstrated." (*Compton v. Ide* (9th. Cir. 1984) 732 F.2d 1429, 1432-1433.)

Applying the foregoing principles to Grosz and Hartley, we conclude Vasek should have amended his complaint after issuance of the remittitur on appeal. When he finally did amend after receiving leave, he went both too far and not far enough. He added new conclusory allegations but

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[4] We recognize that the "related-acts" test in *Green* was overruled by *Morgan*. But we discuss it because Vasek relies upon it and it may have some continuing viability as to general principles.

he did not supply the factual predicate necessary to make Grosz and Hartley liable for a continuing conspiracy and certainly not liable for every adverse employment event that affected Vasek after September 1992 when these two people departed the scene.

When a case involves an order sustaining a demurrer with leave to amend and " '[w]hen a plaintiff elects not to amend the complaint, it is presumed that the complaint states as strong a case as is possible [citation]; and the judgment of dismissal must be affirmed if the unamended complaint is objectionable on any ground raised by the demurrer. [Citations.]' [Citation.]" (*Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585.) Because Vasek declined to amend his complaint to make the necessary allegations, the trial court did not abuse its discretion when it dismissed the action as to Grosz and Hartley. (Code Civ. Proc., § 581, subds. (f)(2); *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

The trial court also properly granted Grosz and Hartley's motion to tax Vasek's costs on appeal because the cost memorandum was belatedly filed on August 2, 2002.[6] In order to be timely, the cost memorandum should have been filed by March 4, 2002, which was 40 days after the clerk of the court issued its remittitur on January 23, 2002. (Cal. Rules of Court, rules 26(d), and 870(a)(1);

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[6] Motions to tax costs were also filed by Mason, the College District, the Attorneys, and Keenan. The same analysis applies regarding them and Lapp.

Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co. (1990) 223 Cal.App.3d 924, 929.)[6]

5. The Attorneys

The Attorneys were sued because they represented the College District in employment matters and gave advice regarding Vasek's employment. The Attorneys were named as defendants in the third amended complaint, the subject of Vasek's previous appeal, and in the EAC, filed after the trial court granted Grosz and Hartley's motion for judgment on the pleadings with leave to amend. At this juncture, the only issue is whether the trial court properly dismissed the EAC with prejudice after Vasek declined to amend.

For several reasons, we uphold the trial court's dismissal of the EAC. First, dismissal was not an abuse of discretion when Vasek declined to amend after the trial court sustained the Attorneys' demurrer and granted the motion to strike with leave to amend. (Code Civ. Proc., §§ 581, subds. (f)(2) and (4); *Leader v. Health Industries of America, Inc., supra,* 89 Cal.App.4th at p. 612.) The dismissal was also proper because both the demurrer and the motion to strike directed at the EAC were well taken. Vasek had not been given leave to file the EAC asserting more allegations and a new cause of action against the Attorneys. The EAC significantly exceeded in scope the trial court's grant of leave to amend Vasek's claims against Grosz and Hartley. Whatever merit may have existed in

[6] The District and District defendants withdraw their objection to the appealability of this issue in a letter filed July 21, 2005, with this court.

his previous versions of the complaint, because Vasek refused to cure the defects in his EAC, the court properly dismissed the action as to the Attorneys. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

6. Keenan

Keenan & Associates was the insurance broker and claims adjuster for the College District. Keenan sent notices to Vasek rejecting his claims against the District on March 10 and August 16, 1994. Vasek alleges that Keenan convinced "District officials to not grant Vasek's request for an inquiry into the reasons for his banishment and the cancellation of the planned investigation."

Keenan occupies the same procedural posture as the Attorneys in that Vasek had not been given leave by the trial court to file the EAC asserting new claims against Keenan. For that reason and because the EAC exceeds the scope of Vasek's previous claims against Keenan, the court properly dismissed the action as to Keenan. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

7. The District

In the previous appeal, based on *Kirchmann v. Lake Elsinore Unified School District, supra,* 83 Cal.App.4th 1098, we affirmed the judgment dismissing the College District itself and the District Defendants, when acting in their official capacity, (E017343, pp. 26 and 71) but proposed "[i]f . . . plaintiff is alleging the retaliatory deprivation of certain rights and privileges, *his complaint can be amended* to incorporate such allegations in his section 1983 claim. [Emphasis added.]" (E017343, pp. 21-22.) Therefore, Vasek's claims against the College District or

any of the District Defendants, acting officially, were terminated by the last appeal. All that remained was the potential to assert a claim against the District Defendants acting in their personal, rather than official, capacities.

As noted, however, Vasek did not file an amended complaint after the remittitur issued (Code Civ. Proc., § 472, subd. (b)). He also did not seek leave to file an amended complaint against the District Defendants. Nevertheless, in his unauthorized version of the EAC, he again named the College District itself as a defendant and added many new allegations and the new cause of action. Again, as discussed above, Vasek's failure to amend his complaint after the remittitur issued and his subsequent failure to seek leave to amend amply justified the trial court dismissing his case after he refused to file another amended complaint.

We also reject Vasek's urging us to revisit the applicability of *Kirchmann* and its holding that a school district is an instrumentality of the state, exempt from suit under section 1983. There is no cognizable reason to abandon our previous decision on this issue. (E017343, pp. 24-27.)

8. Mason

Mason was a College District employee. Vasek alleges that, after he filed his original complaint in 1994, Mason conspired with others to retaliate against Vasek in multiple ways, including by pursuing malicious prosecution of the administrative proceeding against him.

Again, Vasek had not been given leave to file the EAC asserting new claims or a new cause of action against Mason. For that reason and because the EAC exceeds the

scope of Vasek's previous claims against Mason, the court properly dismissed the action as to Mason. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

9. Lapp

Lapp based his motion for summary judgment on the one-year statute of limitations for a section 1983 claim. According to his supporting evidence, Lapp's one contact with Vasek occurred at a curriculum meeting on April 3, 1989. Lapp was a private consultant who supervised the meeting. After Vasek disrupted the meeting, Lapp wrote a report describing Vasek's conduct and in which he recommended eliminating the subject of drafting from the curriculum project. Lapp had no other contact with Vasek and no contact with the College District after June 1989. Lapp argues that, as a matter of law, this single incident cannot support Vasek's conspiracy claims first advanced against Lapp more than five years later in August 1994.

In opposition, Vasek did not offer any contrary evidence or any evidence demonstrating a continuing conspiracy between Lapp and the other defendants. Instead, he contends evidence of a conspiracy involving Lapp may be inferred from other facts or will be presented at trial.

Applying a de novo standard of review, we affirm the grant of summary judgment in favor of Lapp. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) Inferences cannot be made in a factual void. It is not enough, as Vasek does, to hint at evidence that is promised but never delivered. In opposing summary judgment, a party must supply "'specific facts showing that there is a genuine issue for trial.'" (*Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1286.) We

have reviewed the allegations of the complaint and Vasek's sparse submission in opposition to summary judgment and we find nothing to support Vasek's theory of conspiracy liability against Lapp.

We also disregard Vasek's first effort on appeal to assert a motion to tax Lapp's costs because Vasek never filed a motion to tax Lapp's costs in the trial court.

10. Sanctions

The trial court imposed sanctions of $1,400 on Vasek for filing the EAC in violation of the court's order allowing him to amend as to Grosz and Hartley only. Vasek has offered no credible argument and no authority as to why sanctions were an abuse of discretion under Code of Civil Procedure section 128.5: "Every trial court may order a party . . . to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous. . . ." We hold the trial court acted properly. Vasek's filing of the EAC was a blatant example of an action that was in bad faith, frivolous, or both.

11. Disposition

As Charles Dickens wrote in *Bleak House* about another interminable piece of litigation, it "still drags its dreary length before the Court, perennially hopeless." While at one point in these proceedings we recognized Vasek may have been able to present a legitimate claim for trial, subsequent actions by him have lost him the right to proceed. We affirm the judgment in favor of defendants and order them, as prevailing parties, to recover their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/ Gaut
J.

We concur:

s/ Ramirez
P.J.

s/ Hollenhorst
J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ANTHONY G. VASEK, Plaintiff, vs. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants.	Case No. 254638 **~~[PROPOSED]~~ ORDER OF DISMISSAL DEFENDANTS ATKINSON, ANDELSON, LOYA, RUUD & ROMO, RONALD C. RUUD, AND SHERRY G. GORDON WITH PREJUDICE**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on February ___, 2003, in Department 2 of the Riverside Superior Court, Judge Dallas Holmes presiding, the Ex Parte Application for Order of Dismissal filed by Defendants Atkinson, Andelson, Loya, Ruud & Romo, Ronald C. Ruud, and Sherry G. Gordon (hereinafter collectively referred to as the "Attorney Defendants") came on for hearing.

The Court having considered the ex parte application, points and authorities and supporting declaration, and other pertinent documents before him and having taken argument from counsel, the Court makes the following findings:

1. That the Attorney Defendants' Demurrer to the Eighth Amended Complaint was sustained on November 27, 2002 and plaintiff was granted 30 days leave to file a Ninth Amended Complaint as to the Attorney Defendants;

2. That the Attorney Defendants' Motion to Strike Portions of the Eighth Amended Complaint was granted on November 27, 2002 and plaintiff was granted 30 days leave to file a Ninth Amended Complaint as to the Attorney Defendants;

3. That more than 30 days have elapsed since plaintiff was served with the Order sustaining the Attorney Defendants' Demurrer to the Eighth Amended Complaint and granting the Attorney Defendants' Motion to Strike Portions of the Eighth Amended Complaint and plaintiff has failed to file a Ninth Amended Complaint;

4. That more than 30 days have elapsed since the Court granted plaintiff leave to file a Ninth Amended Complaint as to the Attorney Defendants and plaintiff has failed to file a Ninth Amended Complaint;

5. That plaintiff is now time barred from filing a Ninth Amended Complaint as to the Attorney Defendants; and

6. Pursuant to *Code of Civil Procedure* sections 581(f)(2) and 581(f)(4), the Attorney Defendants are entitled to dismissal from this action with prejudice because plaintiff has failed to timely file a Ninth Amended Complaint within the time period allow by the Court following the sustaining of the Attorney Defendants' Demurrer to the Eighth Amended Complaint and the granting of the Attorney Defendants' Motion to Strike Portions of the Eighth Amended Complaint.

IT IS HEREBY ORDERED that pursuant to *Code of Civil Procedure* sections 581(f)(2) and 581(f)(4) defendants Atkinson, Andelson, Loya, Ruud & Romo, Ronald C. Ruud,

and Sherry G. Gordon are dismissed from the above-entitled action with prejudice.

IT IS SO ORDERED.

Dated: February 14, 2003

/s/ Dallas Holmes
Dallas Holmes
JUDGE OF THE SUPERIOR COURT

Presented by:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

/s/ John W. Dietrich
John W. Dietrich
Attorneys for Defendants Atkinson, Andelson, Loya, Ruud & Romo, Ronald C. Ruud, and Sherry G. Gordon

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Attorneys for Defendants:
Karen Sue Grosz and Phil Hartley

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ANTHONY G. VASEK, Plaintiff, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants.	CASE NO. CIV 254638 (PROPOSED) ORDER: DISMISSING DEFENDANTS KAREN SUE GROSZ AND PHIL HARTLEY FROM COMPLAINT (Judge Dallas Holmes, Dept. 2) (Filed Mar. 3, 2003)

The demurrer of defendants Karen Sue Grosz ("Grosz") and Phil Hartley ("Hartley") as to plaintiff Anthony G. Vasek's ("plaintiff") Eighth Amended Complaint came on regularly for hearing on November 27, 2002 in Department 2 of the above-entitled Court, Dallas Holmes, Judge presiding.

The demurrer was sustained and the plaintiff was granted thirty (30) days leave to amend. A proposed order reflecting the Court's ruling was served on the plaintiff by regular U.S. Mail on December 10, 2002. The order was signed and filed by the Court on December 26, 2002. Notice of the filing of the order sustaining the demurrer was served on the plaintiff by regular U.S. Mail on January 8, 2003.

With no amended complaint having been filed within the time granted, defendants Grosz and Hartley may now be dismissed from this action. (*Code Civ. Proc., § 581, subd. (f)(2)*; *Cal. Rules of Ct., rule 325, subd. (f).*) Said dismissal need not be preceded by a noticed motion. (*Wilburn v. Oakland Hospital* (1989) 213 Cal.App.3d 1107, 1110; *Sadler v. Turner* (1986) 186 Cal.App.3d 245, 249-250.)

The Court hereby ORDERS AND DECREES that:

Defendants Karen Sue Grosz and Phil Hartley are dismissed from this action.

Dated: 3 MAR 03 /s/ Dallas Holmes
DALLAS HOLMES
Judge of the Riverside County
Superior Court
DALLAS HOLMES, JUDGE

LAW OFFICES OF DENNIS J. WALSH
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Attorneys for Defendants
MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT (a public entity) (erroneously named as MT. SAN JACINTO COLLEGE DISTRICT), BOBBY AVILA, LAWRENCE BARKLEY, DAVID BOOKIN, CLAIRE BROYLES, BERNARD J. CARRIGAN, WILLIAM FARRELL, ELGIN HUSHBECK, EUGENE KADOW, MARCIA KRULL, RICHARD LOWE, ANN MOTTE, JOHN MOTTE, STEVE NARIN, KAZI NIZAMUDDIN, SHAHLA RAZAVI, KELLY ROBERTS, ROBERT G. ROCKWELL, GWENDOLYN SCHLANGE, ROBERT SCHLEY, JOHN SEED, RICHARD SISK, KARL SPARKS, WAYNE STUART, MICHAEL TAUSIG, WALLY UPPER, M. ANNE WALKER (employees of a public entity, sued individually)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE – CENTRAL DISTRICT

ANTHONY G. VASEK, Plaintiff, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants.	CASE No.: 254638 (Judge Dallas Scott Holmes, Dept. 2) (PROPOSED) ORDER RE DISMISSAL (Filed Mar. 3, 2003)

NOTICE is hereby given that on _____, 2003 in Department 2 of the Riverside County Superior

Court, the Honorable Dallas Scott Holmes, the Ex Parte application for Order of Dismissal filed by defendants MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT (a public entity) (also referred to herein as "DISTRICT"), and BOBBY AVILA, LAWRENCE BARKLEY, DAVID BOOKIN, CLAIRE BROYLES, BERNARD J. CARRIGAN, WILLIAM FARRELL, ELGIN HUSHBECK, EUGENE KADOW, MARCIA KRULL, RICHARD LOWE, ANN MOTTE, JOHN MOTTE, STEVE NARIN, KAZI NIZAMUDDIN, SHAHLA RAZAVI, KELLY ROBERTS, ROBERT G. ROCKWELL, GWENDOLYN SCHLANGE, ROBERT SCHLEY, JOHN SEED, RICHARD SISK, KARL SPARKS, WAYNE STUART, MICHAEL TAUSIG, WALLY UPPER, M. ANNE WALKER (employees of a public entity, sued as individuals) (collectively referred to herein as "DISTRICT OFFICIALS") (DISTRICT and DISTRICT OFFICIALS collectively referred to herein as "DISTRICT DEFENDANTS") came upon hearing. The court, having considered the ex parte application, points and authorities and supporting declaration, and other documents, and oral argument, the court makes the following finding:

1. That Demurrer of the DISTRICT DEFENDANTS to the First Cause of Action was sustained, Plaintiff was granted thirty (30) days leave to file an amended complaint.

2. That DISTRICT DEFENDANTS' Motion to Strike Portions of plaintiff ANTHONY G. VASEK's Eighth Amended Complaint was granted.

3. That more than thirty (30) days have elapsed since the court granted plaintiff leave to file a Ninth Amended Complaint as to the DISTRICT DEFENDANTS, and plaintiff has failed to file a Ninth Amended Complaint.

4. That more than thirty (30) days have elapsed since plaintiff was served with the Order sustaining the DISTRICT DEFENDANTS' Demurrer to the Eighth Amended Complaint and plaintiff has failed to file a Ninth Amended Complaint.

5. That plaintiff is time barred from filing a Ninth Amended Complaint.

6. That Defendants MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT (a public entity), BOBBY AVILA, LAWRENCE BARKLEY, DAVID BOOKIN, CLAIRE BROYLES, BERNARD J. CARRIGAN, WILLIAM FARRELL, ELGIN HUSHBECK, EUGENE KADOW, MARCIA KRULL, RICHARD LOWE, ANN MOTTE, JOHN MOTTE, STEVE NARIN, KAZI NIZAMUDDIN, SHAHLA RAZAVI, KELLY ROBERTS, ROBERT G. ROCKWELL, GWENDOLYN SCHLANGE, ROBERT SCHLEY, JOHN SEED, RICHARD SISK, KARL SPARKS, WAYNE STUART, MICHAEL TAUSIG, WALLY UPPER, and M. ANNE WALKER as well as BENTON CALDWELL, ALICE CUTTING, DON ROHRABACHER, WAYNE WEBB and BENJAMIN DAVIS are entitled to dismissal from this action with prejudice as plaintiff has failed to timely file an amended Ninth Amended Complaint.

IT IS HEREBY ORDERED AND DECREED that:

Pursuant to *Code of Civil Procedure* §581(f)(2) and §581(f)(4), defendants MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT (a public entity), BOBBY AVILA, LAWRENCE BARKLEY, DAVID BOOKIN, CLAIRE BROYLES, BERNARD J. CARRIGAN, WILLIAM FARRELL, ELGIN HUSHBECK, EUGENE KADOW, MARCIA KRULL, RICHARD LOWE, ANN MOTTE, JOHN MOTTE, STEVE NARIN, KAZI NIZAMUDDIN, SHAHLA

RAZAVI, KELLY ROBERTS, ROBERT G. ROCKWELL, GWENDOLYN SCHLANGE, ROBERT SCHLEY, JOHN SEED, RICHARD SISK, KARL SPARKS, WAYNE STUART, MICHAEL TAUSIG, WALLY UPPER, and M. ANNE WALKER, as well as BENTON CALDWELL, ALICE CUTTING, DON ROHRABACHER, WAYNE WEBB and BENJAMIN DAVIS are dismissed from this action with prejudice.

Dated: 3 MAR 03 /s/ Dallas Scott Holmes
DALLAS SCOTT HOLMES
Judge of the Riverside County
Superior Court

SUPERIOR COURT OF CALIFORNIA
– RIVERSIDE COUNTY

ANTHONY G. VASEK, Plaintiff, vs. MT. SAN JACINTO et al. Defendants.	CASE NO. CIV254638 Action Date: Aug. 26, 1994 Judge: Hon. Charles D. Field ORDER GRANTING MOTION OF DEFENDANT ROY MASON TO DISMISS PLAINTIFF'S EIGHTH AMENDED COMPLAINT Date: March 5, 2003 Time: 8:30 A.M. Dept: 2 Trial: Not Set (Filed Mar. 28, 2003)

The motion of Defendant ROY B. MASON for an order dismissing the eighth amended complaint of Plaintiff ANTHONY VASEK, pursuant to California Code of Civil Procedure §581(f)(4), came on regularly for hearing on March 5, 2003 at 8:30 a.m. in Department 2, the Honorable Dallas S. Holmes, Superior Court Judge, presiding. Plaintiff, ANTHONY VASEK, appeared in pro per. Mark T. Petersen of Chapin Shea McNitt & Carter appeared on behalf of moving Defendant ROY MASON. Counsel for other parties to this action appeared for their respective clients.

After consideration of the motion, the absence of any opposition by Plaintiff, and oral argument at the hearing, the Court ruled as follows:

The motion of Defendant ROY MASON to dismiss the eighth amended complaint of Plaintiff ANTHONY VASEK is granted, without prejudice.

IT IS SO ORDERED:

DATED: MAR 28 2003, 2003

/s/ DALLAS HOLMES, JUDGE
Hon. Dallas S. Holmes
Judge of the Superior Court

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Attorneys for Defendants,
KEENAN & ASSOCIATES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE – CENTRAL DISTRICT

ANTHONY G. VASEK, Plaintiff, vs. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants.	CASE NO.: CIV254638 [PROPOSED] ORDER DISMISSING PLAINTIFF'S EIGHTH AMENDED COMPLAINT AS TO KEENAN & ASSOCIATES DATE FILED: August 26, 1994 JUDGE : Dallas Holmes DEPT : "2" (Filed Sep. 9, 2003)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORDS:

Based upon the Stipulation of Plaintiff, Anthony G. Vasek, and Defendant, Keenan & Associates, waiving hearing and notice of motion, and the Court having considered Keenan's Ex Parte Motion to Dismiss, the points and authorities, and the Declaration of Katherine B. Pene and the attached exhibits, the Court hereby ORDERS AND DECREES that:

Defendant Keenan & Associates is dismissed from this action, without prejudice.

IT IS SO ORDERED.

Dated: SEP -9 2003 /s/ Ed Sachumann Pro Tem
Dallas Holmes
Judge of the Superior Court

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Attorneys for Defendant
ROYCE LAPP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ANTHONY G. VASEK, Plaintiff, v. MT. SAN JACINTO COLLEGE DISTRICT; MT. SAN JACINTO COLLEGE DISTRICT BOARD OF TRUSTEES; MT. SAN JACINTO COLLEGE DISTRICT ACADEMIC SENATE; MT. SAN JACINTO COLLEGE FACULTY ASSOCIATION CTA/NEA; CALIFORNIA TEACHERS ASSOCIATION; NATIONAL, Defendants. AND RELATED CROSS-ACTIONS.	Case No. CIV-254638 [Unlimited Jurisdiction] Judge: Hon. Dallas Holmes Dept: "02" **JUDGMENT BY COURT [C.C.P. § 437c]** (Filed Jan. 13, 2004)

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

This Court, having on December 23, 2003 granted the Motion for Summary Judgment of defendant ROYCE LAPP, and having ordered entry of judgment as requested in said motion.

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff ANTHONY G. VASEK shall take nothing from defendant ROYCE LAPP and that defendant ROYCE LAPP shall recover costs.

JAN 13, 2003

Dated: January ___, 2004

/s/ DALLAS HOLMES, JUDGE
Hon. Dallas Holmes
Judge of the Superior Court
of the State of California

Court of Appeal, Fourth Appellate District, Div. 2 –
Nos. E033583/E035087

S142627

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ANTHONY G. VASEK, Plaintiff and Appellant,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,
Defendants and Respondents.

(Filed Jun. 14, 2006)

Petition for review DENIED.

The request for an order directing publication of the opinion is denied.

GEORGE
Chief Justice

BEFORE THE
BOARD OF TRUSTEES
MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT
STATE OF CALIFORNIA

In the Matter of the DISMISSAL of: ANTHONY G. VASEK, a permanent academic employee, Respondent.	OAH No. L-9610147

DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge of the Office of Administrative Hearings, at San Jacinto, California on January 28, 29, 30, 31, 1997. Complainant was represented by Hector Salitrero, Esq. Respondent, Anthony G. Vasek, appeared personally and was represented by Marianne Reinhold, Esq.

Oral and documentary evidence was received and the record left open until June 10, 1997 so the parties could submit written closing arguments and briefs concerning issues raised during the hearing. The written closing arguments, briefs and transcripts of the hearing were received, read and considered and the matter was deemed submitted on July 10, 1997.

FINDINGS OF FACT

The Administrative Law Judge makes the following Findings of Fact:

PROCEDURAL FINDINGS:

1. On November 22, 1995, respondent was served with a Notice to Correct Deficiencies pursuant to Education Code sections 87732 and 87734. The Notice to Correct Deficiencies was issued by Karl Sparks, in his official capacity as Dean of Human Resources of the Mt. San Jacinto College District ("District"). In the Notice the District sets forth examples of conduct characterized as Unprofessional Conduct, Evident Unfitness for Service, and Persistent Violation of or Refusal to Obey School Laws or Regulations. The allegations focused on respondent's alleged refusal to follow rules, regulations, contract provisions and repeated directives regarding the proper method of applying for leaves of absence, respondent's failure to submit alternate lesson plans for classes, respondent's unilateral extension of class time, without the approval of the administration, respondent's unilateral attempt, without the approval of the administration, to discontinue teaching his Math 90 class, respondent's verbal abuse of students and his requiring students to complete "inappropriate" surveys during class time, respondent's refusal to follow administrative directives regarding his participation as a "representative" to the Engineering Liaison Committee ("ELC"), respondent's attendance of conferences without approval, respondent's inappropriate and unprofessional conduct at a January 19, 1995 "Pre-College" meeting, and respondent's unprofessional, disrespectful manner, in communicating with his immediate supervisor, Robert Rockwell. These alleged incidents of "Unprofessional Conduct", "Evident Unfitness for Service", and "Persistent Violation of or Refusal to Obey School Laws or Regulations" occurred between October 26, 1994 and October 20, 1995.

2. On June 11, 1996, the District filed a Notice of Intent to Dismiss respondent. The Notice of Intent to Dismiss and Statement of charges were filed by Roy Mason, in his official capacity as Superintendent/ President of the District. The Notice of Intent to Dismiss only alleges three instances when "Unprofessional Conduct", "Evident Unfitness for Service", and "Persistent Violation of or Refusal to Obey School Laws or Regulations" allegedly occurred after respondent was served with the November 22, 1995 Notice to Correct Deficiencies. The allegations were: Respondent improperly attended an ELC meeting on March 13 and 14, 1996 (Charges 17 and 18.), respondent failed to submit alternative class plans for classes scheduled to be held while he attended the March 13 and 14, 1996 ELC meeting (Charge 19.), and respondent conducted himself in an unprofessional manner by being disrespectful to his peers and immediate supervisor, Robert Rockwell, during an April 30, 1996 "evaluation summary meeting" (Charge 33, subdivisions F, G and H, and Charge 34, subdivisions A, B and C.)

Respondent timely filed an Objection to the Notice of Intent to Dismiss and the instant hearing ensued.

SUBSTANTIVE FINDINGS:

3. At all relevant times, respondent, Anthony Vasek, was, and currently is, a permanent academic employee of the District.

4. At all relevant times, respondent worked for the District teaching mathematics. He also held, and currently holds, teaching credentials in engineering, physics and business administration.

5. Sometime during 1992 or 1993, respondent was assigned to teach a vocational drafting course involving computer aided drafting ("CAD"). Respondent was familiar with the vocational drafting curriculum and believed that he was not properly qualified to teach the course. Respondent notified the Chief Instructional Officer of the District, Robert Rockwell ("Rockwell") of his concerns. Rockwell insisted that respondent's engineering education and background qualified him to teach the vocational drafting course. Rockwell was wrong. The Academic Senate, established to oversee academic excellence and curriculum interpretation, fully assessed respondent's background, training and experience in engineering and math and concluded that respondent did not have the proper credentials to teach the vocational drafting course. These findings persuaded Rockwell to assign respondent to the math department as a full-time math instructor instead of requiring him to teach the vocational drafting course.

6. As a consequence of respondent's exposure to and familiarity with the vocational drafting program, respondent correctly noted that the way the vocational drafting course was described in the San Jacinto College Catalogue could; and, in some instances actually did, mislead students into believing the vocational drafting course was a transfer engineering course when, in reality, it was not. Respondent brought the unintentional misrepresentations to Rockwell's attention.

7. Respondent committed himself to developing a transfer course in engineering. As part of his efforts respondent began participating in the ELC, an organization comprised of members from many different colleges and junior colleges. The ELC began over 50 years ago as part of the Education Round Table. The ELC's focus is on

engineering education and problems associated with "articulation", the transferability of course credits, primarily from community colleges to four year institutions.

Respondent was a well respected member of the ELC whose contributions were highly valued by other ELC participants.

8. Rockwell and respondent remained at odds concerning San Jacinto's representations that the vocational drafting course was an "engineering" course and about respondent's qualifications to teach the vocational drafting course.

The relationship between Rockwell and respondent began steadily deteriorating. Rockwell believed respondent was intent on subverting his authority and respondent believed Rockwell was improperly trying to prevent his exercise of Free Speech and Academic Freedom. Actually, at the outset, there was merely miscommunication between the two men, however, over time, the men's beliefs became self-fulfilling prophecies. Rockwell and respondent no longer cooperated with each other. Instead, they became enemies, each intent on making the other yield.

Rockwell began creating roadblocks to respondent's continued participation in the ELC and insisted respondent conform to the "letter" of each and every District policy and rule. For example, Rockwell directed respondent to notify the ELC that he was not authorized to participate in the ELC as an official representative of San Jacinto Community college. Rockwell also insisted respondent file conference attendance request forms, absence request forms and alternate lesson plans for his classes at least two weeks in advance of attending ELC meetings.

Technically, for years instructors had been required to file these forms prior to missing classes for conference attendance, in practice, however, the forms were often not filed or filed after conference attendance. In essence, respondent was now being required to adhere to rules and regulations that had, through past custom and habit, been largely ignored[1] without administrative action being taken against the offending instructors.

9. Prior to receiving the November 22, 1995 Notice to Correct Deficiencies, respondent had already complied with Rockwell's directive to inform the ELC that he could not continue participating as an institutional representative of San Jacinto Community College. The ELC responded by telling respondent that they did not care if he could no longer participate as an institutional representative for San Jacinto Community College. Respondent's past contributions and continued participation were so highly valued by members of the ELC, that they just wanted him to continue participating in his individual capacity. Accordingly, respondent continued attending ELC meetings.

Respondent attended an ELC conference on March 13, 14 and 15, 1996. Respondent had been so preoccupied with

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[1] Several instructors testified that they missed classes to attend conferences without getting prior approval or submitting alternate lesson plans and absence request forms. For example, Don Robinson testified that on occasion he had attended conferences without filing an alternate lesson plan, rather, the class was merely given a take-home assignment to complete. Willie Hamilton testified that he had missed class without submitting any alternate lesson plans. Hamilton did not submit an absence request form either. In fact, at the instant hearing, Hamilton testified that he did not even know that absence request forms existed.

teaching and other academic matters at San Jacinto Community College that he had forgotten to reserve a space at the ELC meeting. Respondent contacted ELC organizers at the last minute and was told that the ELC could accommodate him. Respondent hurriedly completed a conference attendance request form and filed it with Rockwell's office on March 12, 1996, the day before the conference began.[2] Respondent used personal necessity leave time to attend the ELC conference.

Respondent did not submit alternate lesson plans because his students were already scheduled for take-home examinations on March 13th and 14th, the only two days respondent missed classes due to attending the ELC conference.[3] Since respondent's classes were regularly scheduled for take-home examinations on the days respondent was absent, there was no need for respondent to submit an alternate lesson plan.

Respondent did not submit an absence request form because he did not even know such forms existed and he reasonably believed that the conference attendance request form served as notice of his anticipated absence(s).

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[2] Again, given the administration's past custom and habit of allowing instructors to file request forms at the last minute, or even after they had attended a respective conference, respondent's actions were not inappropriate or unusual. Quite the contrary, respondent filed his request in conformity with past practices at San Jacinto Community College.

[3] Again, through custom and practice, the college administration had developed a policy of not requiring an instructor to file an alternate lesson plan if his/her students were regularly scheduled to complete an out of class assignment such as a take-home examination.

11. On March 18, 1996, Rockwell reprimanded respondent for attending the March 13-15, 1996 ELC conference because: "your participation in the ELC is not relevant to your job assignment nor to our program, since we do not have a transfer program in engineering or related technologies." and, because rockwell had previously directed respondent not to participate in the ELC *as a college representative.* The gravamen of Rockwell's complaint about respondent's attendance appears to be his erroneous assumption respondent had not informed the ELC he was not authorized to participate in the ELC as an institutional representative.

In the March 18, 1996 reprimand, Rockwell also mentioned, in passing, that respondent failed to submit a conference attendance request form, along with a conference schedule, at least two weeks in advance of the conference. However, respondent did submit a conference request form before attending the conference, albeit only the day before. As previously noted, however, respondent submitted a conference attendance request form a day in advance of the scheduled conference in conformity with past practices of other instructors at the college, practices that did not result in any administrative actions against those offending instructor(s).

12. On April 30, 1996, respondent attended an "Evaluation Summary Meeting" at which respondent's performance as an instructor was discussed and evaluated by Rockwell and by respondent's peers. The peer evaluations were all positive, nonetheless, Rockwell was extremely critical of respondent's overall attitude and performance at the college. Respondent's peers disagreed with Rockwell's assessment and respondent cautioned his peers not to become "dupes" or "administrative tools"

leading to respondent's ultimate dismissal from the college[4]. The meeting was tense and everyone was on edge. Voices were raised and angry words were exchanged between Rockwell and respondent[5]. Given the nature of the meeting and the setting, behind closed doors, there was nothing "unprofessional" that occurred.

13. Members of the teaching staff, administrators, some students and members of the support staff know about respondent's feud with Rockwell; however, there is no evidence that respondent's conduct and the attendant knowledge by others have negatively impacted respondent's effectiveness as a teacher, or that his reputation as a teacher in the District has been irreparably compromised. Quite the contrary, every student who testified at the hearing, including students who received average or below average grades in respondent's math class, spoke highly of respondent's teaching abilities. Even the few students who testified on behalf of the District readily admitted respondent is an excellent math teacher.

14. During respondent's term of employment with the District he has had satisfactory or above satisfactory evaluations. Respondent is viewed by his peers and his students as a man of good character and integrity.

15. Respondent's demeanor at the hearing reveal a man who is committed to providing the best education he

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[4] Attendees testified that respondent said nothing that they, as peers, deemed offensive.

[5] Insufficient evidence was presented concerning exactly what was said during the meeting. The witnesses who attended the meeting did not remember respondent referring to Rockwell as a "liar" or as "despicable".

can for his students. He is dedicated to improving the college facilities and curriculum.

16. Respondent did not repeat any improper acts he was told to correct in the November 22, 1995 Notice to Correct Deficiencies. Respondent even ceased certain activities and practices he believed were constitutionally protected exercises of Free Speech and the proper exercise of his academic freedom. Although the District was not required by Education Code sections 87732 and 87734 to give respondent an opportunity to correct deficiencies constituting "Evident Unfitness for Service" and/or "Persistent Violation of or Refusal to Obey School Laws or Regulations", the District nonetheless gave respondent the opportunity to correct those type deficiencies. The District knew all of the facts concerning respondent's conduct at the time it served him with the Notice to Correct Deficiencies. The District intended that respondent modify his behavior to eliminate the conduct described in the Notice to Correct Deficiencies. Respondent reasonably believed that if he conformed with the Notice's mandate to correct his behavior no further administrative action would be taken against him, and he modified his behavior accordingly.

DETERMINATION OF ISSUES

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following Determination of Issues:

1. Cause does not exist to dismiss or penalize respondent pursuant to Education Code sections 87732, subdivision (a) (Unprofessional Conduct), 87732, subdivision (d) (Evident Unfitness for Service) or 87732, subdivision (f) (Persistent Violation of or Refusal to Obey School

Laws and or Regulations). As set forth in Findings 1, 2 and 16, complainant is estopped from disciplining respondent on the basis of conduct set forth in the Notice – Conduct corrected by respondent. (See *Lentz* v. *McMahon* (1989) 49 Cal.3d 393, 399.)

2. Even assuming arguendo complainant were not estopped from pursuing the instant dismissal action against respondent, the facts and circumstances of the interactions between respondent and the administration (Rockwell), establish that dismissal is not warranted.

In *Morrison* v. *State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court stated that dismissal was appropriate only if a teacher's misconduct demonstrates his/her unfitness to teach. In assessing a teacher's fitness to continue teaching certain factors must be considered, including: (1) The likelihood of recurrence of the questioned conduct; (2) the presence of extenuating or aggravating circumstances; (3) the likelihood that the conduct may have adversely affected students or fellow teachers and the degree of adversity anticipated; (4) the proximity or remoteness in time of the conduct; (5) the type of teaching certificate held by the respondent; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; and, (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons (*Id.* at 229.) The Court also noted that an individual's dismissal requires a showing that their retention poses a significant danger of harm to either students, school employees, or others. This determination requires an inquiry into whether the misconduct itself adversely effects the teacher's ability to continue teaching or, whether any publicity concerning the

conduct, in and of itself, substantially impairs the teacher's ability to continue teaching.

Application of the *Morrison* factors to the facts of the instant case lead to the conclusion that respondent is fit to continue teaching. As set forth in Findings 5, 6, 7, 8, 9, 10, 11 and 12, respondent obviously had a difference of opinion on educational matters with the College administration. Respondent was concerned about course descriptions in the college catalogue misleading students to their ultimate educational detriment. At all times, he reasonably believed he was exercising his rights to Free Speech and Academic Freedom. Accordingly, his motives were praiseworthy and any disciplinary action against him would have an adverse impact or chilling effect upon his free exercise of constitutional rights as well as those of other certified persons.

Although respondent did make some mistakes in the way he handled certain situations, the mistakes did not even approach a level that posed a significant danger of harm to the students, school employees, or others. Respondent's actions did not adversely affect his ability to continue teaching; and, there was no evidence of any attendant adverse publicity.

There were numerous mitigating factors and no factors in aggravation. As set forth in Findings 13, 14 and 15, respondent is an outstanding and respected teacher in the District. He has worked cooperatively with the District in an attempt to resolve their differences as evidenced by his compliance with the Notice to Correct Deficiencies. (Findings 1, 2 and 16.)

In light of the *Morrison* factors, and the factors in mitigation, respondent's past conduct does not evidence unfitness for continued service as a teacher.

ORDER

WHEREFORE, FOLLOWING ORDER is hereby made:

The Statement of Charges/Accusation against respondent, Anthony G. Vasek, is dismissed without imposition of discipline.

Dated: August 5, 1997.

/s/ Roy W. Hewitt
ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings
Commission Member

NOT TO BE PUBLISHED

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

ANTHONY G. VASEK, Plaintiff and Appellant, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants and Respondents	E017343 and E020125 (Super.Ct.No. 254638) **OPINION**
ANTHONY G. VASEK, Plaintiff and Appellant, v. ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES et al., Defendants and Respondents.	E019009 (Super.Ct.No. 254638) (Filed Oct. 4, 2001)

APPEAL from the Superior Court of Riverside County. Stephen D. Cunnison, Judge. Affirmed in part; reversed in part; dismissed in part.

Anthony G. Vasek, in pro per., for Plaintiff and Appellant.

* * *

Although local governmental entities are "persons" under section 1983,[28] states and state officials acting in their official capacities are not.[29] The question, therefore, is whether a school district and its related entities are state agencies for purposes of section 1983.

In support of its argument, District relies on *Belanger v. Madera Unified School District*.[30] In Belanger, however, the Ninth Circuit addressed only the question of whether a school district was an arm of the state, and, thereby, entitled to immunity under the Eleventh Amendment of the United States Constitution. The Eleventh Amendment, however, has no application in state courts.[31]

Nevertheless, this court addressed the exact question in our recent case, *Kirchmann v. Lake Elsinore Unified School District*.[32] In *Kirchmann*, based on various criteria, including that state's beneficial ownership of school district funds and other property, we held that the school district shared the state's immunity from suit under section 1983.[33]

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[28] *Monell v. New York City Dept of Social Services* (1978) 436 U.S. 658, 690-691.

[29] *Will v. Michigan Dept. of State Police* (1989) 491 U.S. 58, 71.

[30] *Belanger v. Madera Unified School District* (9th Cir. 1992) 963 F.2d 248, 254.

[31] *Hilton v. South Carolina Public Railways Comm'n.* (1991) 502 U.S. 197, 204-205; *Will v. Michigan Dept of State Police, supra*, 491 U.S. at pages 63-64.

[32] *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal.App.4th 1098.

[33] *Kirchmann v. Lake Elsinore Unified School Dist., supra*, 83 Cal.App.4th at page 1115.

School district officials acting in their official capacities also are immune from suit under section 1983. A lawsuit against the school district official in his or her official capacity is essentially a suit against the school district itself.[34] Naming the entity and naming an official in his or her official capacity as an agent for the entity are merely two ways of pleading the same action.[35] Even a judgment obtained against a state official or a school district official in his or her official capacity indirectly would result in some state fiscal impact.[36] Therefore, as a natural extension of our holding in *Kirchmann*, the school district official in his or her official capacity is not a "person" subject to suit under section 1983.

However, a school district official in his or her personal or individual capacity is a "person" for section 1983 purposes.

* * *

11. Disposition

We dismiss the appeal as to defendants Union and Chancellor. We affirm the trial court's judgments of dismissal based on the following orders: the court's order sustaining District's demurrer as to District and District officials acting in their official capacity; the court's order sustaining RCOE's demurrer; the court's order granting

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[34] See *Will v. Michigan Dept. of State Police, supra*, 491 U.S. at page 71; see also *Brandon v. Holt* (1985) 469 U.S. 464, 471-472.

[35] See *Will v. Michigan Dept. of State Police, supra*, 491 U.S. at p. 71, citing *Kentucky v. Graham* (1985) 473 U.S. 159, 165-166 and *Monell v. New York City Dept. of Social Services, supra*, 436 U.S. at page 690, fn. 55.

[36] See *Brandon v. Holt, supra*, 469 U.S. at page 472; *Kirchmann v. Lake Elsinore Unified School Dist., supra*, 83 Cal.App.4th at page 1109.

summary judgment as to State Academic Senate; and the court's order granting State Board's motion for judgment on the pleadings. We reverse, however, the court's judgments of dismissal based on other decisions, as follows: the court's order sustaining District's demurrer as to District officials, including District Board members, acting in their personal capacities; the court's order sustaining Attorneys' demurrer; the court's order sustaining Keenan's demurrer; the court's order granting summary judgment as to individual State defendants, Grosz and Hartley, acting in their personal capacities; and the court's order granting Lapp's motion to strike under Code of Civil Procedure section 425.16. Plaintiff shall recover his costs on appeal.

NOT TO BE PUBLISHED

/s/ Gaut
J.

We concur:

/s/ McKinster
Acting P. J.

/s/ Ward
J.

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ANTHONY G. VASEK, Plaintiff/Appellant, -vs- MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants/Respondents.	)	[FILED 6/21/02] Appeal Nos. **E017343** and E020125
ANTHONY G. VASEK, Plaintiff/Appellant, -vs- ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES et al., Defendants/Respondents.	)	Appeal No. E019009

SECOND RENEWED MOTION TO RECALL REMITTITUR BASED ON NEW DEVELOPMENTS (CCP §1008(b)); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ANTHONY G. VASEK; ORDER

ANTHONY G. VASEK,
Plaintiff/Appellant in Pro Per
23345 Caminito Telmo
Laguna Hills, CA 92653
(949) 697-4268

Plaintiff/Appellant Anthony G. Vasek (hereinafter "Vasek") hereby moves this Court to recall its remittitur

for the purpose of making clear that the defendants, who were "disenfranchised" from the case through a clerical error induced by their counsel's recklessness, were indeed intended by the Court of Appeal to continue to be party defendants in the within remanded action. This motion is based upon the Memorandum of Points and Authorities and the Declaration of Anthony G. Vasek which are submitted herewith and made a part hereof.

Date: June 20, 2002

ANTHONY G. VASEK,
Plaintiff/Appellant in Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

Vasek brought in the Riverside County Superior Court a 42 U.S.C. 1983 action against the Mt. San Jacinto Community College District and a number of other entities and individuals, included among whom were District-related Defendants Bobbie Avila, Lawrence Barkley, David Bookin, Claire Broyles, Benton Caldwell, Bernard J. Carrigan, Alice Cutting, Benjamin Davis, William Farrell, Elgin Hushbeck, Eugene Kadow, Marcia L. Krull, Richard H. Lowe, Robert McNerney, Ann Motte, John Motte, Steve Narin, Kazi Nizamuddin, Shahla Razavi, Kelly Roberts, Robert Rockwell, Don Rohrabacher, Gwendolyn Schlange, Robert Schley, John Seed, Richard Sisk, Karl Sparks, Wayne Stuart, Michael Tausig, Wally Upper, M. Anne Walker, and Wayne Webb.

This Court filed its opinion in this case on October 4, 2001, and issued its remittitur on January 23, 2002. The

Court's opinion reversed the trial court's dismissal of District-related Defendants, including District Board members, acting in their personal capacities.

As hereinafter more fully appears, nineteen of the District-related defendants listed above drifted into a legal limbo without being noticed until just recently. Though this Court's opinion applies as much to them as to the other District-related defendants, their counsel unilaterally disenfranchised them from the case by communicating misinformation to the Clerk of this Court in a manner that evaded notice. These "disenfranchised" defendants are not recognized by the Riverside County Superior Court as defendants in the within remanded action. Clarification by this Court of Appeal is necessary if said "disenfranchised" defendants are to be restored as defendants in the remanded action. Failure of this Court to do so will result in severe prejudicial consequences to Plaintiff.

II

STATEMENT OF THE PERTINENT FACTS

On February 8, 2002, fourteen individual substitutions of attorney – one for each of the following defendants: Mt. San Jacinto Community College District, Lawrence Barkley, Claire Broyles, Eugene Kadow, Ann Motte, Kelly Roberts, Robert Rockwell, Don Rohrabacher, Gwendolyn Schlange, Karl Sparks, Wayne Stuart, Michael Tausig, Wally Upper, and M. Anne Walker – were filed in the Riverside County Superior Court and served upon all parties. Said substitutions of attorney substituted "DENNIS J. WALSH, LAW OFFICES OF DENNIS J. WALSH" as attorney(s) of record in place and stead of "DENNIS J. WALSH, WALSH & DECLUES LLP." From that point

forward, therefore, Vasek served pleadings upon the Law Offices of Dennis J. Walsh *and* the offices of Walsh & Declues on the presumption that Mr. Declues was continuing to represent the balance of the District-related defendants (i.e., those who had not substituted the Law Offices of Dennis J. Walsh for Walsh & Declues).

On March 13, 2002, the Riverside County Superior Court convened a status conference which was attended only by Mr. Ordonez of the Law Offices of Dennis J. Walsh. (Vasek did not appear because he had not been notified of said conference; Vasek does not know the reason for the others' failure to appear.) The Superior Court, therefore, continued the status conference to May 1, 2002.

At the May 1 status conference, Vasek noted that no attorney appeared on behalf of the District-related defendants who had not substituted the Law Offices of Dennis J. Walsh for Walsh & Declues and brought this to the trial court's attention. The trial court, however, expressed no interest in Vasek's observation.

Subsequent to attending the Status Conference on May 1, 2002, Vasek received from the Law Offices of Dennis J. Walsh a letter dated April 30, 2002, a copy of which is attached hereto, marked Exhibit 1 and made a part hereof. The letter instructed Vasek to cease mailing documents to the law firm of Walsh & Declues because that law firm no longer existed. The letter also stated:

> "We are receiving the envelopes you are addressing to Mr. Declues at 15821 Ventura Boulevard, Suite 625, Encino, CA 91436 as [sic] the post office is going by the change of address request we had submitted to forward all mail of suite 625 to suite 465."

This immediately placed Vasek in a quandary over what to do about serving the defendants who *had not* substituted the Law Offices of Dennis J. Walsh for Walsh & Declues.

Soon after receiving the April 30 letter from the Law Offices of Dennis J. Walsh, Vasek received from the Superior Court a Notice of Status Conference dated May 1,2002, a copy of which is attached hereto, marked Exhibit 2 and made a part hereof. Said notice contained the following line printed in caps:

> "NOTE: ALL OTHER PARTIES HAVE BEEN NOTIFIED"

Vasek therefore called the Clerk's Office of the Riverside County Superior Court to ascertain the address(es) used by the Court to notify the parties who had not substituted the Law Offices of Dennis J. Walsh for Walsh & Declues. Vasek was informed that said defendants were listed in the Court's computer as having been dismissed and therefore had not been notified. Vasek thereupon called the Clerk's Office of the California Court of Appeal, Fourth Appellate District, Division Two, to ascertain the status of said defendants in the Court of Appeal's record.

Vasek was informed that the appellate court's computer listed said defendants as "inactive." When Vasek inquired as to the definition of "inactive," he was told by the clerk that "apparently the defendants were *in pro per* and did not file a respondent's brief." This surprised Vasek because he knew that said defendants had first been represented by Liebman, Reiner & Walsh and then, through a substitution of attorneys, by Walsh & Declues. Indeed, Exhibit 3, attached hereto and made a part hereof, shows that Walsh & Declues had represented said defendants at the appellate level; and Vasek was sure that the

Court of Appeal had not granted said firm leave to withdraw as counsel. So, equipped with a copying machine, Vasek traveled to the Court of Appeal on May 10, 2002, to review the appellate record in order to ascertain what had gone wrong. Here is what he discovered.

The appellate court's docket entries show, as of May 10, 2002, that a substitution of attorneys was filed on September 20, 1996, substituting Walsh & Declues in place of Liebman, Reiner & Walsh, that a motion was filed on September 6, 2001, by Dennis J. Walsh for leave to withdraw as counsel for Roy Mason III *only*, that said motion for leave to withdraw was denied by an order filed on September 12, 2001, and that on February 11, 2002, the Court of Appeal forwarded to the Superior Court 14 substitutions of attorney which bore superior court headings. The appellate court's docket entries show no other activities related to a properly filed substitution of attorneys or a properly motioned request to withdraw as counsel that involved either Walsh & Declues or the Law Offices of Dennis J. Walsh .

In reviewing the appellate record, however, Vasek also discovered a letter sent by Walsh & Declues to the attention of Kelly Conn, a clerk of the Court of Appeal. A copy of said letter is attached hereto, marked Exhibit 4 and made a part hereof. Vasek asks this Court to note that the letter, filed on April 27, 2000, *unilaterally and without leave of court* shortened the list of defendants represented by Walsh & Declues. Vasek asks this Court to note further that the letter itself bears no indication that Vasek was ever copied; and Vasek assures this Court that, until he discovered the letter in the appellate court's file on May 10, 2002, he was completely unaware of its existence.

Vasek has sent to Mr. Dennis J. Walsh a letter dated May 25, 2002, asking Mr. Walsh to advise Vasek as to what Vasek should do, *now that Walsh & Declues is defunct*, about serving the "disenfranchised" defendants – i.e., those who had been represented by Mr. Walsh under the mantel of Walsh & Declues but who *had not* substituted the Law Offices of Dennis J. Walsh for Walsh & Declues. A copy of said letter is attached hereto, marked Exhibit 5 and made a part hereof. Vasek did not hear from the Law Offices of Dennis J. Walsh until June 5, 2002, when Mr. Ordonez telephoned Vasek to tell him that the matter was being investigated by his firm but that they were not ready to concede that the "disenfranchised" defendants were parties in the remanded action.

In the meantime, defendants have been filing and serving all manner of pleadings, including demands to inspect documents, conduct depositions, etc., without ever effecting service of these documents on the "disenfranchised" defendants. In response to Vasek's objections, some defense counsel, taking the same stance as the Law Offices of Dennis J. Walsh, have questioned whether said "disenfranchised" defendants were parties in the remanded action.

III

LEGAL AUTHORITY

A remittitur can be recalled to permit the court to "clarify and make certain" any matters that are implicit in the court's opinion and judgment. (*Ruth v. Lytton Savings & Loan Association* (1969), 272 Cal App 2d 24, 25.) This Court's opinion was intended to apply as much to the "disenfranchised" defendants as to the other District-related

defendants. Because the consequences to Vasek are so significant, this Court is duty bound to recall its remittitur for the purpose of making clear that the Court of Appeal did indeed intend to have the "disenfranchised" defendants continue as party defendants in the within remanded action.

IV

PREJUDICIAL AND OPPRESSIVE CONSEQUENCES TO VASEK

The clarification sought by Vasek is not insignificant or inconsequential. If the "disenfranchised" defendants are not restored to their original status as defendants in the remanded action, Vasek will suffer prejudicial consequences of significant proportions. Some examples follow. As hereinafter more fully appears, it is not only important that this Court act, but that it act *with dispatch*.

A. Vulnerable Complaint

As long as the "disenfranchised" defendants are absent as parties defendant in the remanded action, Vasek is prevented from alleging the true and complete facts of his case without exposing his complaint to fatal attack. To impede Vasek so is legally impermissible and morally insufferable.

B. Oppressive Depositions

A deposition of Vasek has been noticed along with a demand for the production of thousands of pages of documents. Due to the complexity of the case and the voluminous nature of Vasek's documentary holdings, the oral

deposition which defendants wish to conduct will require, by opposing counsel's own estimate, the expenditure of an enormous amount of time and energy on the part of Vasek over the course of many days. (The deposition notice describes the deposition as on-going and offers no completion date.) As one might expect, the deposition notice was not served on the "disenfranchised" defendants. The exclusion of the "disenfranchised" defendants from the noticed deposition exposes Vasek to the likelihood that, when the "disenfranchised" defendants are finally restored by this Court, Vasek will have to suffer through the ordeal of a long and tedious deposition all over again. This would be unreasonable and oppressive within the meaning of *West Pico*. [Oppression exists where there is "some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961), 56 Cal 2d 407 at 417.)]

Vasek is resisting appearing at the noticed deposition until after the question of the "disenfranchised" defendants is resolved; but, opposing counsel is adamantly pressing for Vasek's appearance through a noticed motion to compel arguing that "[i]t is *crucial* that the deposition of Dr. VASEK go forward *as soon as possible*." (Emphases are added.) Vasek believes that counsel's rush to depose is motivated as much by the desire to harass and oppress as by the desire to obtain a quick dismissal via a motion for summary judgment, as evidenced by item no. 4 of counsel's status conference statement, a copy of which is attached hereto, marked Exhibit 6 and made a part hereof.

C. Concomitant Vulnerability to Motion for Summary Judgment

A motion for summary judgment will necessarily be dependent upon the admissibility of the evidence presented to the trial court. In the instant case, however, the outcome of the motion can be different depending on when the question of the "disenfranchised" defendants is resolved by this Court. If the deposition of Vasek is allowed to go forward *before* the question of the "disenfranchised" defendants is resolved, all statements Vasek might make at his deposition regarding what the missing defendants said or did in the advancement of the conspiracy will be considered inadmissible as hearsay. On the other hand, if the "disenfranchised" defendants are restored to their original status *prior* to Vasek's deposition, the same statements by Vasek would become admissible.

It should be quite obvious, from a review of the examples presented in sections A, B and C immediately above, that Vasek should not be required to pay such severe consequences for the reckless and irresponsible acts of Mr. Walsh and his law firm.

V

CONCLUSION

Because the consequences to Vasek are so significant, this Court is duty bound to recall its remittitur for the purpose of making clear that the Court of Appeal did indeed intend to have the "disenfranchised" defendants continue as party defendants in the within remanded action.

REQUEST FOR SANCTIONS

The instant case is complex enough without the introduction of problems such as that created by Mr. Walsh when he unilaterally disenfranchised some of his clients. While it is human to make mistakes, Mr. Walsh has made a habit of it – to the point of being irresponsible – and he should be made to pay the consequences. The following establishes the evidentiary basis for Vasek's request for sanctions against Mr. Walsh and his law firm for conduct demonstrating a consistently unprofessional and irresponsible *animus*.

Vasek begins with an incident that reflects Mr. Walsh's total lack of concern for the disruptive impact his conduct may have on others. To accommodate his vacation plans, Mr. Walsh convinced this Court of Appeal, over Vasek's strenuous objections, to reschedule oral argument from a date on which Vasek was on summer recess to a date on which Vasek was back in the classroom. This disrupted the education of scores of Vasek's students, and also caused Vasek substantial hardship. In the end, Mr. Walsh never participated in oral argument, appearing only *after* oral argument was concluded. (Noting that Mr. Walsh had missed the *entire* discussion, Justice Gaut offered the following comment: "Too bad.")

Two days later (i.e., on September 6, 2001), Mr. Walsh filed in the Court of Appeal a motion for leave to withdraw as counsel for Defendant/Respondent Mason only. A copy of said motion is attached hereto, marked Exhibit 7 and made a part hereof. In paragraph 3 of his supporting declaration, Mr. Walsh lists the parties whom he represents. Vasek asks the Court to note that the "disenfranchised" defendants appear in this list, but other defendants

whom he lists in his letter filed on April 27, 2000 (cf., Exhibit 4) do not.

His state of confusion does not end there. In paragraphs 10 through 12, Mr. Walsh, who claims in paragraph 3 to be "the attorney responsible for the defense of this action as related to the DISTRICT and DISTRICT related defendants," states that he had no idea that his law partner was involved in a conflicting action involving some of the same parties.

On November 7, 2001, Vasek mailed a letter to Mr. Walsh in which Vasek indicated that he had received the Court of Appeal's order denying the motion to withdraw as counsel, but that he had never received a copy of the motion itself. (A copy of said letter is attached hereto, marked Exhibit 8 and made a part hereof.) The letter asked Mr. Walsh to send Vasek a copy of the motion at his earliest convenience. Mr. Walsh never responded.

Had Mr. Walsh acted more responsibly and provided Vasek a copy of his letter to the Court of Appeal filed on April 27, 2000, and a copy of his motion for leave to withdraw as counsel filed on September 6, 2001, Vasek would have immediately recognized that a problem existed with regard to the "disenfranchised" defendants, and he would have acted on it before the matter was remanded to the Superior Court. Unfortunately, Vasek did not become aware of the existence of the problem and comprehend its significance until just recently.

Because of the urgency of the situation, Vasek launched his investigation immediately upon realizing that something was seriously amiss. This happened to coincide with the most taxing and demanding time of his professional occupation – i.e., the end of a semester when:

1) the last of the in-term exams must be prepared, administered and evaluated; 2) final exams must be prepared, administered and evaluated; and 3) scores must be compiled and processed to produce grades that must be submitted in a timely fashion (in this case, no later than June 11, 2002).

Vasek was required to expend a considerable amount of effort and time to investigate, analyze, identify and address the mess created by Mr. Walsh. In order to meet all of his academic responsibilities in a timely manner, Vasek was required to work on this case during weeknights and on weekends, including the entire Memorial Day weekend. Mr. Walsh's fiasco disrupted Vasek's personal life in a significant way, justifying the assessment of monetary sanctions against him and his law firm.

The time expended by Vasek to investigate this matter and to prepare, serve and file this motion, totals 62 hrs. At $100 per hour, the rate at which Vasek is paid for work done during the summer recess, the total amount sought as monetary sanctions against Mr. Walsh and his law firm comes to $6200.

Respectfully submitted,

Date: June 20, 2002

_____

ANTHONY G. VASEK,
Plaintiff/Appellant in Pro Per

DECLARATION OF ANTHONY G. VASEK

I, Anthony G. Vasek, declare as follows:

1. I am Plaintiff/Appellant in the within action.

2. I have read the foregoing motion and the accompanying memorandum of points and authorities. All statements of fact contained in said motion and memorandum are personally known by me and declared by me to be true and correct, as though expressly stated in this declaration, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of June, 2002, at Laguna Hills, California.

ANTHONY G. VASEK,
Plaintiff/Appellant in Pro Per

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ANTHONY G. VASEK, Plaintiff/Appellant, -vs- MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants/Respondents.	)	Appeal Nos. **E017343** and E020125
ANTHONY G. VASEK, Plaintiff/Appellant, -vs- ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES et al., Defendants/Respondents.	)	Appeal No. E019009

ORDER

Plaintiff/Appellant's request that this Court recall its remittitur for the purpose of clarifying the status of certain individuals as party defendants in the within remanded action is GRANTED.

Dated:

PRESIDING JUSTICE

Anthony G. Vasek, In Pro Per
23345 Caminito Telmo
Laguna Hills, CA 92653
(949) 697-4268

[FILED 6/21/02]

IN THE SUPERIOR COURT

OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

ANTHONY G. VASEK, Plaintiff, -vs- MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants.	) Case No. 254638) Dept. 5 (Judge Charles Field)) MOTION FOR CONTINUANCE & REQUEST FOR SANCTIONS) Date: 7/19/02) Time: 8:30 a.m.

Plaintiff Anthony G. Vasek hereby moves this Court for an order continuing all proceedings heretofore and hereafter noticed until this Court can determine who, if anyone, represents Defendants Mt. San Jacinto College District Board of Trustees, Mt. San Jacinto College District Academic Senate, Bobbie Avila, David Bookin, Benton Caldwell, Bernard J. Carrigan, Alice Cutting, Benjamin Davis, William Farrell, Elgin Hushbeck, Marcia L. Krull, Richard H. Lowe, Robert McNerney, John Motte, Steve Narin, Kazi Nizamuddin, Shahla Razavi, Robert Schley, John Seed, Richard Sisk, and Wayne Webb. This motion is based on the within memorandum of points and authorities, accompanying exhibits and declaration of Anthony G. Vasek, and the complete files and records of this action, both in the Riverside County Superior Court and the

California Court of Appeal, Fourth Appellate District, Division Two

Date: 6/21/02

Anthony G. Vasek,
Plaintiff in Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF THE PERTINENT FACTS

Subsequent to attending the Status Conference held in Department 5 on May 1, 2002, Plaintiff received from the Law Offices of Dennis J. Walsh a letter dated April 30, 2002, a copy of which is attached hereto, marked Exhibit 1 and made a part hereof. The letter instructed Plaintiff to cease mailing documents to the law firm of Walsh & Declues because that law firm no longer exists. This immediately placed Plaintiff in a quandary over what to do about serving the defendants who *had not* substituted the Law Offices of Dennis J. Walsh for Walsh & Declues.

Soon after receiving the April 30 letter from the Law Offices of Dennis J. Walsh, Plaintiff received from this Court a Notice of Status Conference dated May 1,2002, a copy of which is attached hereto, marked Exhibit 2 and made a part hereof. Said notice contained the following line printed in caps:

> "NOTE: ALL OTHER PARTIES HAVE BEEN NOTIFIED"

Plaintiff therefore called the Clerk's Office of the Riverside County Superior Court to ascertain the address(es) used by the Court to notify the parties who had not substituted

the Law Offices of Dennis J. Walsh for Walsh & Declues. Plaintiff was informed that said defendants were listed in the Court's computer as having been dismissed and therefore had not been notified. Plaintiff thereupon called the Clerk's Office of the California Court of Appeal, Fourth Appellate District, Division Two, to ascertain the status of said defendants at the Court of Appeal.

Plaintiff was informed that the appellate court's computer listed said defendants as "inactive." When Plaintiff inquired as to the definition of "inactive," he was told by the clerk that "apparently the defendants were *in pro per* and did not file a respondent's brief." This surprised Plaintiff because he knew that said defendants had first been represented by Liebman, Reiner & Walsh and then, through a substitution of attorneys, by Walsh & Declues. Indeed, Exhibit 3, attached hereto and made a part hereof, shows that Walsh & Declues had represented said defendants at the appellate level; and Plaintiff was sure that the Court of Appeal had not granted said firm leave to withdraw as counsel. So, equipped with a copying machine, Plaintiff traveled to the Court of Appeal on May 10, 2002, to review the appellate record in order to ascertain what had gone wrong. Here is what he discovered.

The appellate court's docket entries show, as of May 10, 2002, that a substitution of attorneys was filed on September 20, 1996, substituting Walsh & Declues in place of Liebman, Reiner & Walsh, that a motion was filed on September 6, 2001, by Dennis J. Walsh for leave to withdraw as counsel for Roy Mason III only, that said motion for leave to withdraw was denied by an order filed on September 12, 2001, and that on February 11, 2002, the Court of Appeal forwarded to the Superior Court 14 substitutions of attorney which bore superior court headings. The appellate

court's docket entries show no other activities related to a properly filed substitution of attorneys or a properly motioned request to withdraw as counsel that involved either Walsh & Declues or the Law Offices of Dennis J. Walsh .

In reviewing the appellate record, however, Plaintiff discovered a letter sent by Walsh & Declues to the attention of Kelly Conn, a clerk of the Court of Appeal. A copy of said letter is attached hereto, marked Exhibit 4 and made a part hereof. Plaintiff asks this Court to note that the letter, filed on April 27, 2000, *unilaterally and without leave of court* shortened the list of defendants represented by Walsh & Declues. Plaintiff asks this Court to note further that the letter itself bears no indication that Plaintiff was ever copied; and Plaintiff assures this Court that, until he discovered the letter in the appellate court's file on May 10, 2002, he was completely unaware of its existence.

Plaintiff has sent to Mr. Dennis J. Walsh a letter dated May 25, 2002, asking Mr. Walsh to advise Plaintiff as to what Plaintiff should do, *now that Walsh & Declues is defunct*, about serving the "missing" defendants – i.e., those who had been represented by Mr. Walsh under the mantel of Walsh & Declues but who *had not* substituted the Law Offices of Dennis J. Walsh for Walsh & Declues. A copy of said letter is attached hereto, marked Exhibit 5 and made a part hereof.

II

DISCUSSION

A. The Present Situation

Technically speaking, these "missing" defendants are still being represented by counsel since none of their attorneys has been given leave of court to withdraw as counsel. Also, since none of the "missing" defendants substituted the Law Offices of Dennis J. Walsh for Walsh & Declues, it follows that these "missing" defendants must be represented by Mr. Declues. In his April 30 letter, however, Mr. Walsh informs Plaintiff as follows:

> "We are receiving the envelopes you are addressing to Mr. Declues at 15821 Ventura Boulevard, Suite 625, Encino, CA 91436 as [sic] the post office is going by the change of address request we had submitted to forward all mail of suite 625 to suite 465." (See Exhibit 1.)

Thus, Plaintiff is unable to serve court-related documents upon the only attorney who technically still represents the "missing" defendants. And, because these "missing" defendants are technically still being represented by counsel, Plaintiff is precluded from communicating directly with said defendants (which means he is also precluded from serving papers directly upon them). On the other hand, the very firm, whom these "missing" defendants *did not* substitute as their attorneys, *is* receiving the documents intended for these "missing" defendants *even though the firm itself does not recognize them as clients.*

B. Learning from the Past

The factual circumstances which gave rise to this motion are *but one* manifestation of the chaos that has reigned since the inception of this case. They provide evidence to this Court that, contrary to opposing counsel's depictions at the May 1 status conference, the delays and confusion that have plagued this case from the very beginning were not the makings of Plaintiff.

Indeed, an inventory of the proceedings in this case demonstrates that defendants presented, for the most part, untenable arguments which were intended primarily to overwhelm Plaintiff but which, in the end, did not survive argument on the merits. Consider the following summary.

PARTY	DEFENSE	DISPOSITION
Attorney Defendants	No Cause of Action	failed
	CC §1714.10	failed
	Time-barred	failed
Defendant Lapp	No Cause of Action	failed
	CCP §425.16	failed
Defendant Keenan	No Cause of Action	failed
District Defendants	No Cause of Action	failed
	Gov Code §§820.2 & 815.2	failed
	EERA Pre-emption	failed
	Exhaustion of Administrative Remedies	failed
	Wrong forum	failed
	Time-barred	failed
	CCP §425.16	failed
	CCP §47(b)	failed

	CC §47(c)	failed
	Arm of the State	succeeded
Defendants Grosz & Hartley	No Cause of Action	failed
	CCP §437(c)	failed
	Time-barred Public Entity Claim	failed
State Entity Defendants	Arms of the State	succeeded
County Defendant	No Cause of Action	succeeded

A review of the above table and the underlying briefs in this case reveals that Plaintiff, though not an attorney, made *far fewer* and *far less significant* errors than did the other players in this drama. Indeed, in commenting on Plaintiff's analysis of Attorney Defendants' CC §1714.10 defense, the Court of Appeal stated:

> "*We agree with plaintiff* [emphasis added] that this is the type of outcome-determinative law that the Supreme Court in *Felder* prohibited." (Opinion, p. 50.)

Similarly, when it considered Defendant Lapp's CCP §425.16 defense, the Court of Appeal's opinion reflected precisely Plaintiff's brief on the subject; to wit,

> "Allowing Lapp to invoke the protections of Code of Civil Procedure section 425.16 for his attempt to suppress plaintiff's speech contradicts the Legislature's express intent. . . . In this case, while plaintiff acted in furtherance of his right of free speech, Lapp attempted to use the procedural remedy under Code of Civil Procedure section 425.16 to chill plaintiff's exercise of his constitutional rights. *No reasonable reading of the statute supports this paradoxical result.* We

> simply cannot find that plaintiff's lawsuit fell within the ambit of the statute." (Opinion, pp. 70-71; emphasis is added.)

It is important to note that, when Plaintiff had proffered exactly the same argument to Judge Cunnison at the trial court level, Judge Cunnison had rejected Plaintiff's argument and readily accepted Lapp's unreasonable reading of the statute in support of what was clearly a paradoxically illogical result.

Noting that those who ignore history are doomed to repeat it, Plaintiff, at the May 1 status conference, repeatedly advised this Court of his concern that the proceedings in the Superior Court might again degenerate into utter chaos if the Court did not proceed carefully to avoid the mistakes of the past. Plaintiff specifically refers to Judge Cunnison's tendency to side with opposing counsel, irrespective of what Plaintiff had to say – even to the point of endorsing nonsense.

It was this tendency to ignore Plaintiff that led Judge Cunnison, over Plaintiff's strenuous objections, to retain jurisdiction over the case after the filing of the first appeal. This refusal to yield jurisdiction over matters that were clearly embraced by the issues on appeal caused the case to drag on in the Superior Court unnecessarily *for 18 more months*, led to *four more amended complaints* than needed, and ultimately resulted in the filing of *three separate appeals* which the Court of Appeal, concurring with Plaintiff's original assessment, eventually consolidated into one appeal.

Opposing counsel's repeated insinuations that Plaintiff's lack of training in the law is what has caused this case to become unnecessarily complex and unnecessarily

prolonged, therefore, is pure, unadulterated nonsense. While he is well aware that, in some instances, parties *in pro per* have not taken the time to educate themselves adequately on the specific issues at bar, Plaintiff assures this Court that he has applied, and will continue to apply, himself diligently to the study of the issues impacting this case. Plaintiff therefore respectfully urges this Court not to be unduly influenced by his appearance *in pro per* or by opposing counsel's unsubstantiated *ad hominem* remarks.

C. The Potential for More Chaos

Opposing counsel have already filed numerous pleadings, demands for depositions, production of documents, etc., none of which have been served on the "missing" defendants. Moreover, Plaintiff himself is in the process of submitting motions, oppositions, etc. without any inkling of how to serve these "missing" defendants. (Even if said "missing" defendants were to appear *in pro per*, Plaintiff has no addresses to which he can direct service.)

More specifically, Plaintiff intends to file a Motion for a Case Management Order which will institute some semblance of order and efficiency to the instant case. For such an order to be effective, *all* defendants must participate, including the "missing" defendants. It is therefore incumbent upon this Court to resolve the matter of the "missing" defendants as quickly and as smoothly as possible. To accomplish this without creating further complications, this Court should continue all matters now noticed and stay all future proceedings until the matter of the "missing" defendants is resolved. Failure to do so will only plunge this case further into chaos and generate much unnecessary agony.

Oppression exists where there is "some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961), 56 Cal 2d 407 at 417.) Having lived through the chaos created by Judge Cunnison, Plaintiff will never again allow himself to be so abused by the defendants and the Court. To that end, therefore, he offers the following as a reasonable response to defendants' current demands, pending this Court's decision on the instant motion.

Plaintiff will be happy to allow himself to be deposed by the defendants. However, due to the time-consuming nature of the inquiry, he will not subject himself to unnecessarily repetitive depositions; for, he would consider such demands to be oppressive. Consequently, Plaintiff will not appear at any noticed deposition of himself that has not been properly served upon all defendants. This includes the deposition scheduled for June 10, 2002, which has not been served upon the "missing" defendants.

Similarly, Plaintiff will be happy to produce documents for defendants' inspection. However, due to the voluminous nature of Plaintiff's holdings, he will not subject himself to unnecessarily repetitive demands for inspections; for, he would consider such demands to be oppressive. Consequently, Plaintiff will not honor any demand to produce documents which has not been properly served upon all defendants. This includes the demand to produce documents scheduled for June 13, 2002, which has not been served upon the "missing" defendants.

III

CONCLUSION

For all of the foregoing reasons, this Court should grant Plaintiff's motion to continue all proceedings heretofore and hereafter noticed until such time as the matter of the "missing" defendants is resolved.

REQUEST FOR SANCTIONS

The instant case is complex enough without the introduction of problems such as that created by Mr. Walsh when he unilaterally disenfranchised his clients, the "missing" defendants. While it is human to make mistakes, Mr. Walsh has made a habit of it – to the point of being irresponsible – and he should be made to pay the consequences. The following establishes the evidentiary basis for Plaintiff's request for sanctions against Mr. Walsh and his law firm for conduct demonstrating a consistently unprofessional and irresponsible *animus*.

Plaintiff begins with an incident that reflects Mr. Walsh's total lack of concern for the disruptive impact his conduct may have on others. To accommodate his vacation plans, Mr. Walsh convinced the Court of Appeal, over Plaintiff's strenuous objections, to reschedule oral argument from a date on which Plaintiff was on summer recess to a date on which Plaintiff was back in the classroom. This disrupted the education of scores of Plaintiff's students, and also caused Plaintiff substantial hardship. In the end, Mr. Walsh never participated in oral argument, appearing only *after* oral argument was concluded (Noting that Mr. Walsh had missed the *entire* discussion, Justice Gaut offered the following comment: "Too bad.")

Two days later (i.e., on September 6, 2001), Mr. Walsh filed in the Court of Appeal a motion for leave to withdraw as counsel for Defendant/Respondent Mason only. A copy of said motion is attached hereto, marked Exhibit 6 and made a part hereof.

In paragraph 3 of his supporting declaration, Mr. Walsh lists the parties whom he represents. Plaintiff asks the Court to note that the "missing" defendants appear in this list, but other defendants whom he lists in his letter filed on April 27, 2000 (cf., Exhibit 4) do not.

His state of confusion does not end there. In paragraphs 10 through 12, Mr. Walsh, who claims in paragraph 3 to be "the attorney responsible for the defense of this action as related to the DISTRICT and DISTRICT related defendants," states that he had no idea that his law partner was involved in a conflicting action involving some of the same parties.

On November 7, 2001, I mailed a letter to Mr. Walsh in which I indicated that I had received the Court of Appeal's order denying the motion to withdraw as counsel, but that I had never received a copy of the motion itself. (A copy of said letter is attached hereto, marked Exhibit 7 and made a part hereof.) The letter asked Mr. Walsh to send me a copy of the motion at his earliest convenience. Mr. Walsh never responded.

Had Mr. Walsh acted more responsibly and provided Plaintiff a copy of his letter to the Court of Appeal filed on April 27, 2000, and a copy of his motion for leave to withdraw as counsel filed on September 6, 2001, Plaintiff would have immediately recognized that a problem existed, and he would have acted on it before the matter was remanded to the Superior Court. Unfortunately, Plaintiff

did not become aware of the existence of the problem and comprehend its significance until just recently.

Because of the urgency of the situation, Plaintiff launched his investigation immediately upon realizing that something was seriously amiss. This happened to coincide with the most taxing and demanding time of his occupation – i.e., the end of a semester when: 1) the last of the in-term exams must be prepared, administered and evaluated; 2) final exams must be prepared, administered and evaluated; and 3) scores must be compiled and calculated to produce grades that must be submitted, in this case, no later than June 11, 2002.

Plaintiff was required to expend a considerable amount of effort and time to investigate, analyze, identify and address the mess created by Mr. Walsh. In order to meet all of his responsibilities in a timely manner, Plaintiff was required to work on this case during the week and on weekends, including the entire memorial day weekend. Mr. Walsh's fiasco disrupted Plaintiff's personal life in a significant way, justifying the assessment of monetary sanctions against him and his law firm.

The time expended by Plaintiff to investigate this matter and prepare this motion, totals 44 hrs. At $100 per hour, the rate at which Plaintiff is paid for work done during the summer recess, the total amount sought as monetary sanctions against Mr. Walsh and his law firm comes to $4400.

Respectfully submitted,

Date: 6/21/02

_____

ANTHONY G. VASEK,
Plaintiff in Pro Per

DECLARATION OF ANTHONY G. VASEK

I, Anthony G. Vasek, declare as follows:

1. I am Plaintiff in the within action.

2. I have read the foregoing MOTION FOR CONTINUANCE & REQUEST FOR SANCTIONS. All statements of fact contained in said motion and request are declared by me to be true and correct, as though expressly stated in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of May, 2002, at San Jacinto, California.

ANTHONY G. VASEK,
Plaintiff in Pro Per

Anthony G. Vasek, In Pro Per
23345 Caminito Telmo
Laguna Hills, CA 92653
(949) 697-4268

IN THE SUPERIOR COURT

OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

ANTHONY G. VASEK, Plaintiff, -vs- MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants.	Case No. 254638 Dept. 5 (Judge Charles Field) PROPOSED ORDER

IT IS HEREBY ORDERED that Defendants Mt. San Jacinto College District Board of Trustees, Mt. San Jacinto College District Academic Senate, Bobbie Avila, David Bookin, Benton Caldwell, Bernard J. Carrigan, Alice Cutting, Benjamin Davis, William Farrell, Elgin Hushbeck, Marcia L. Krull, Richard H. Lowe, Robert McNerney, John Motte, Steve Narin, Kazi Nizamuddin, Shahla Razavi, Robert Schley, John Seed, Richard Sisk, and Wayne Webb be restored as defendants in this action, and that Mr. Walsh pay to Plaintiff the sum of $4400 as a sanction.

IT IS FURTHER ORDERED that Mr. Declues appear as counsel for said defendants, that he accept service of all documents on behalf of said defendants, and that he inform all parties of his mailing address and telephone number.

IT IS FURTHER ORDERED that Mr. Walsh serve a copy of this order upon Mr. Declues, and that Mr. Walsh deliver to Mr. Declues all documents pertaining to this case that were addressed to Mr. Declues but received by Mr. Walsh.

IT IS FURTHER ORDERED that Plaintiff file and serve his Motion for Case Management Order no later than ___.

IT IS FURTHER ORDERED that all manner of proceedings heretofore noticed be served upon Mr. Declues on behalf of the defendants named in this order. Said proceedings are hereby continued to a date which will be determined by this Court at the hearing on Plaintiff's Motion for Case Management Order.

Date: _____

Judge Charles Field

[EXHIBIT 1]

Law Offices of Dennis J. Walsh

Dennis J. Walsh
Shari S. Daneshrad
George E. Ordonez
Stephan Birgel

Sender's email address: dwalsh@djwalshlaw.com

April 30, 2002

Anthony G. Vasek
P.O. Box 1551
San Jacinto, CA 92581-1551

Re: VASEK v. MT. SAN JACINTO COLLEGE DISTRICT, ET AL.
Our File Number : 0640-8883

Dear Dr. Vasek:

Thank you for correcting your file information regarding my firm's suite number. However, you are now adding Mr. Declues of Walsh & Declues, 15821 Ventura Boulevard, Suite 625, Encino, CA 91436 to the mailing list which is incorrect.

According to the Substitution of Attorneys that were filed on February 13, 2002, they substituted the Law Offices of Dennis J. Walsh, 15821 Ventura Boulevard, Suite 465, Encino, CA 91436 *in place of* Walsh & Declues, LLP, 15821 Ventura Boulevard, Suite 625, Encino, CA 91436. Please note, as of January 1, 2002, Walsh & Declues ceased to exist, thereby prompting the Substitution of Attorneys to be filed and changing the attorney of record for defendants Mt. San Jacinto Community College District, Gwendolyn, Schlange, Wayne Stuart, Ann Motte, Claire Broyles, Don Rohrabacher, Rockwell, Lawrence Barkley, Karl Sparks, Michael Tausig, Wally Upper, M. Anne Walker, Kelly Roberts, Eugene Kadow to the Law Offices of Dennis J. Walsh. We are receiving the envelopes you are addressing to Mr. Declues at 15821 Ventura Boulevard, Suite 625, Encino, CA 91436 as the post office is going by the change of address request we had submitted to forward all mail of suite 625 to suite 465.

Again, we ask you to correct your records and please send any future correspondence on behalf of the above-defendants to "The Law Offices of Dennis J. Walsh, 15821 Ventura Boulevard, Suite 465, Encino, CA 91436."

Sincerely,

LAW OFFICES OF DENNIS J. WALSH

/s/ Dennis J. Walsh
By: DENNIS J. WALSH, ESQ.
DJW:dz
[Address And Phone Numbers Omitted]

[EXHBIT 2]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501

NOTICE OF STATUS CONFERENCE

PLAINTIFF: ANTHONY G VASEK
VS. CASE NO. 254638
DEFENDANT: MT. SAN JACINTO COLLEGE DISTRICT

TO: ANTHONY G VASEK
P.O. BOX 1551
SAN JACINTO CA 92581-1551

All attorneys of record or parties appearing in person are required to attend a Status Conference on:

DATE: 08/02/02

TIME: 8:30

DEPT: 05

COURT ADDRESS: [X] 4050 Main Street
RIVERSIDE, CA 92502-0431

[ ] 41002 COUNTY CENTER DRIVE
TEMECULA, CA 92591

[ ] 880 N. STATE STREET
HEMET, CA 92543

– NOTE: ALL OTHER PARTIES HAVE BEEN NOTIFIED –

CLERK'S CERTIFICATE OF MAILING

I, Clerk of the Superior Court, County of Riverside, do hereby certify that I am not a party to the above action, that on this date I served a copy of the foregoing NOTICE by depositing said copy in a sealed envelope with prepaid

postage, in the mail at Riverside, CA 92501, California, addressed as indicated above.

Dated: 05/01/02 By: _____
DEBBIE GRIFFIN DEPUTY

[EXHIBIT 3]

2ND CIVIL NO. E017343

COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ANTHONY G. VASEK
Plaintiff/Appellant,

vs.

MT. SAN JACINTO COLLEGE DISTRICT et alia.,
Defendants/Respondents.

Appeal from a Judgment of the Superior Court of California County of Los Angeles, Case No. 254638
The Honorable Stephen D. Cunnison, Judge Presiding

RESPONDENTS' NOTICE OF JOINDER IN OPPOSITION TO APPELLANT'S MOTION TO CONSOLIDATE APPEALS

Dennis J. Walsh, Esq. – SB #106646
Kristine Kwong, Esq. – SB #160944
WALSH & DECLUES
16501 Ventura Blvd., Suite 302
Encino, California 91436-2067
(818) 986-1776

Attorneys for Defendants/Respondents MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT (a public entity) (erroneously sued and served as MT. SAN JACINTO COLLEGE DISTRICT); MT. SAN JACINTO COLLEGE DISTRICT BOARD OF TRUSTEES; MT. SAN JACINTO COLLEGE DISTRICT ACADEMIC SENATE; BOBBIE AVILA; DAVID BOOKIN; CLAIR BROYLES; BENTON CALDWELL; BERNARD J. CARRIGAN; ALICE CUTTING; BENJAMIN DAVIS; WILLIAM FARRELL; ELGIN HUSHBECK; MARSHA KRULL; RICHARD H. LOWE; ROY B. MASON; ROBERT McNERNEY; ANN MOTTE; JOHN MOTTE; STEVE NARIN; KAZI NIZAMUDDIN; SHAHLA RAZAVI; ROBERT G. ROCKWELL; DON ROHRABACHER; GWENDOLYN SCHLANGE; ROBERT SCHLEY; JOHN SEED; RICHARD SISK; WAYNE STUART; and WAYNE WEBB (employees of a public entity)

* * *

[EXHIBIT 4]

WALSH & DECLUES, LLP
ATTORNEYS AT LAW

[Names And Addresses Omitted In Printing]

April 25, 2000

(Filed Apr. 27, 2000)

State of California Court of Appeal
Fourth Appellate District – Division Two
3389 Twelfth Street
Riverside, CA 92501

Attention: Kelly Conn

Re: Vasek v. Mt. San Jacinto Community College District
Case No. E017343
(LASC Case No. 254638)

Dear Ms. Conn:

This letter will confirm that Kenneth A. Jew of Liebman, Reiner & Walsh should be removed from the court's mailing list. In 1996, Dennis J. Walsh left Liebman, Reiner & Walsh and formed the law firm of Walsh & Declues, LLP. Kenneth A. Jew is no longer with either firm. Mr. Walsh represents the following defendants/respondents:

> Mt. San Jacinto Community College District, Gwendolyn Shlange, Wayne Stuart, Ann Motte, Claire Broyles, Don Rohrabacher, Roy Mason, Robert Rockwell, Lawrence Barkley, Karl Sparks, Michael Tausig, Wally Upper, M. Anne Walker, Kelly Roberts and Eugene Kadow

Please contact me if you have any questions regarding the above. Thank you.

Sincerely,

WALSH & DECLUES, LLP
Attorney at Law

/s/ Deanna Zyrd
By: Deanna Zyrd, Secretary to
DENNIS J. WALSH, ESQ.

[EXHIBIT 5]

Anthony G. Vasek
23345 Caminito Telmo, Laguna Hills, CA 92653
(949) 697-4268

May 25, 2002

Dennis J. Wash [sic]
Law Offices of Dennis Walsh
5821 Ventura Blvd., Suite 465
Encino, CA 91436

Re: *Vasek v. Mt. San Jacinto College District et al.*
U.S. Supreme Court Case No. 01-1476
Court of Appeal Case No. E017343
Superior Court. Case No. 254638
Your File Number 0640-8883

This letter is in response to your letters of April 11 and 30, 2002. The delay in responding to your letters is due to the confusion which your two letters generated and the resulting need to investigate what was afoot. I will begin by addressing your letter of April 11 and conclude by addressing that dated April 30.

In your letter of April 11, you state: "Your Petition for Writ was mailed to the wrong address." Exhibit A, enclosed herein, consists of the pages faxed to the Cockle Printing Co. with instructions to serve *both* you and Walsh &

Declues at your respective suites (i.e., suites 465 and 625). Exhibit B, also enclosed herein, is an Affidavit of Service by Cockle Printing showing that a total of 8 packages were served, including one to each of said suites.

In your letter of April 30, you state that substitutions of attorneys were filed with respect to the College District, Schlange, Stuart, Ann Motte, Broyles, Rohrabacher, Rockwell, Barkley, Sparks, Tausig, Upper, Walker, Roberts, and Kadow. Indeed, I did receive substitutions of attorneys for these 14 defendants. However, I received none for the balance of the defendants shown in Exhibit C enclosed herein. That is why I continued to serve the firm of Walsh & Declues and Mr. Declues himself. Now that you tell me the law firm of Walsh & Declues no longer exists, I am in a quandary over what to do about serving the defendants who *did not* substitute the Law Offices of Dennis J. Walsh for Walsh & Declues.

Please advise.

/s/ A. G. Vasek
Plaintiff in Pro Per

[EXHIBIT A]

MAILING LIST FOR: *VASEK v MT. SAN JACINTO COLLEGE*

Defendants/Respondents MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT, a public entity (erroneously sued and served as MT. SAN JACINTO COLLEGE DISTRICT), MT. SAN JACINTO COLLEGE DISTRICT BOARD OF TRUSTEES, and MT. SAN JACINTO COLLEGE DISTRICT ACADEMIC SENATE, organizational units related to a public entity, BOBBY AVILA, LAWRENCE BARKLEY,

DAVID BOOKIN, CLAIRE BROYLES, BENTON CALDWELL, BERNARD J. CARRIGAN, ALICE CUTTING, BENJAMIN DAVIS, WILLIAM FARRELL, ELGIN HUSHBECK, EUGENE KADOW, MARCIA L. KRULL, RICHARD H. LOWE, ROBERT McNERNEY, ANN MOTTE, JOHN MOTTE, STEVE NARIN, KAZI NIZAMUDDIN, SHAHLA RAZAVI, KELLY ROBERTS, ROBERT G. ROCKWELL, DON ROHRABACHER, GWENDOLYN SCHLANGE, ROBERT SCHLEY, JOHN SEED, RICHARD SISK, KARL SPARKS, WAYNE STUART, MICHAEL TAUSIG, WALLY UPPER, M. ANNE WALKER, and WAYNE WEBB, employees of a public entity

By: Dennis J. Walsh
Walsh & Declues
15821 Ventura Blvd.,
Suite 625
Encino, CA 91436
(818) 986-1776

and

Dennis J. Walsh
15821 Ventura Blvd.,
Suite 465
Encino, CA 91436
(818) 986-1776

Defendant/Respondent KEENAN & ASSOCIATES

By: Katherine B. Pene
Briskin, Latzanich & Pene
15456 Ventura Blvd., Suite 410
Sherman Oaks, CA 91403-3023
(818) 382-1880

Defendant/Respondent RIVERSIDE COUNTY OFFICE OF EDUCATION

By: Dana J. McCune
McCune & Harber
400 S. Hope Street, Suite 720
Los Angeles, CA 90071
(213) 689-2500

Defendants/Respondents RONALD C. RUUD, SHERRY G. GORDON, and LAW FIRM OF ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: Sherry G. Gordon
Atkinson, Andelson, Loya, Ruud & Romo
3612 Mission Inn Avenue, Upper Level
Riverside, CA 92501
(909) 683-1122

Defendant/Respondent ROY B. MASON

By: Edward D. Chapin
Chapin, Shea, McNitt
501 W. Broadway, 15th Floor
San Diego, CA 92101
(619) 232-4261

Defendant/Respondent ROYCE LAPP

By: Barbara J. Mandell
Gilbert, Kelly, Crowley & Jennett
1200 Wilshire Blvd., 6th Floor
Los Angeles, CA 90017
(213) 580-7000

Defendants/Respondents ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES, CHANCELLOR'S OFFICE FOR CALIFORNIA COMMUNITY COLLEGES, BOARD OF GOVERNORS FOR CALIFORNIA COMMUNITY COLLEGES, KAREN SUE GROSZ, and PHIL HARTLEY

By: Dana T. Cartozian
Office of the Attorney General of the State of California
300 S. Spring Street, Suite 500
Los Angeles, CA 90013
(213) 897-2091

[EXHIBIT B]

COCKLE PRINTING CO.

2311 Douglas Street
Omaha, Nebraska 68102-1283
1-800-225-6964
(402) 342-2831
Fax: (402) 342-4850

E-Mail Address:
cpc@cocklelaw.com
Web Site:
www.cocklelaw.com

No. ___

ANTHONY G. VASEK, Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT, ET AL., Respondents.

AFFIDAVIT OF SERVICE

I, Patricia Billotte, of lawful age, being duly sworn, upon my oath state that I did, on the 3 day of APRIL, 2002, send out, postage prepaid, from Omaha, NE, 8 package(s) containing 3 copies of the PETITION FOR WRIT OF CERTIORARI

in the above entitled case. All parties required to be served have been served. Proper postage was affixed to said envelope(s) and they were plainly addressed to the following:

SEE ATTACHED

Subscribed and sworn to before me this 3 day of APRIL, 2002

I am duly authorized under the laws of the State of Nebraska to administer oaths.

/s/ Patricia C. Billotte
Affiant

GENERAL NOTARY – State of Nebraska
ANDREW COCKLE
My Comm. Exp. April 9, 2002

/s/ Andrew Cockle
Notary Public

To be filed for:

Anthony G. Vasek
Petitioner In Propria Persona
P.O. Box 1551
San Jacinto, CA 92581-1551
(909) 336-3021

MAILING LIST FOR: *VASEK v MT. SAN JACINTO COLLEGE*

Defendants/Respondents MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT, a public entity (erroneously sued and served as MT. SAN JACINTO COLLEGE DISTRICT), MT. SAN JACINTO COLLEGE DISTRICT BOARD OF TRUSTEES, and MT. SAN JACINTO COLLEGE DISTRICT ACADEMIC SENATE, organizational units related to a public entity, BOBBY AVILA, LAWRENCE BARKLEY, DAVID BOOKIN, CLAIRE BROYLES, BENTON CALDWELL,

BERNARD J. CARRIGAN, ALICE CUTTING, BENJAMIN DAVIS, WILLIAM FARRELL, ELGIN HUSHBECK, EUGENE KADOW, MARCIA L. KRULL, RICHARD H. LOWE, ROBERT McNERNEY, ANN MOTTE, JOHN MOTTE, STEVE NARIN, KAZI NIZAMUDDIN, SHAHLA RAZAVI, KELLY ROBERTS, ROBERT G. ROCKWELL, DON ROHRA-BACHER, GWENDOLYN SCHLANGE, ROBERT SCHLEY, JOHN SEED, RICHARD SISK, KARL SPARKS, WAYNE STUART, MICHAEL TAUSIG, WALLY TIPPER, M. ANNE WALKER, and WAYNE WEBB, employees of a public entity

By: Dennis J. Walsh
Walsh & Declues
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and

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Defendant/Respondent KEENAN & ASSOCIATES

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Defendants/Respondents RONALD C. RUUD, SHERRY G. GORDON, and LAW FIRM OF ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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Defendant/Respondent ROY B. MASON

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(619) 232-4261

Defendant/Respondent ROYCE LAPP

By: Barbara J. Mandell
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Defendants/Respondents ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES, CHANCELLOR'S OFFICE FOR CALIFORNIA COMMUNITY COLLEGES, BOARD OF GOVERNORS FOR CALIFORNIA COMMUNITY COLLEGES, KAREN SUE GROSZ, and PHIL HARTLEY

By: Dana T. Cartozian
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[EXHIBIT C]

2ND CIVIL NO. E017343

COURT OF APPEAL OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ANTHONY G. VASEK

Plaintiff/Appellant,

vs.

MT. SAN JACINTO COLLEGE DISTRICT et alia.,

Defendants/Respondents.

Appeal from a Judgment of the Superior Court of California County of Los Angeles, Case No. 254638
The Honorable Stephen D. Cunnison, Judge Presiding

RESPONDENTS' NOTICE OF JOINDER IN OPPOSITION TO APPELLANT'S MOTION TO CONSOLIDATE APPEALS

Dennis J. Walsh, Esq. – SB #106646
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Attorneys for Defendants/Respondents MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT (a public entity) (erroneously sued and served as MT. SAN JACINTO COLLEGE DISTRICT); MT. SAN JACINTO COLLEGE DISTRICT BOARD OF TRUSTEES; MT. SAN JACINTO COLLEGE DISTRICT ACADEMIC SENATE; BOBBIE AVILA; DAVID BOOKIN; CLAIR BROYLES; BENTON CALDWELL; BERNARD J. CARRIGAN; ALICE CUTTING; BENJAMIN DAVIS; WILLIAM FARRELL; ELGIN HUSHBECK; MARSHA KRULL; RICHARD H. LOWE; ROY B. MASON; ROBERT McNERNEY; ANN MOTTE; JOHN MOTTE; STEVE NARIN; KAZI NIZAMUDDIN; SHAHLA RAZAVI; ROBERT G. ROCKWELL; DON ROHRABACHER; GWENDOLYN SCHLANGE; ROBERT SCHLEY; JOHN SEED; RICHARD SISK; WAYNE STUART; and WAYNE WEBB (employees of a public entity)

* * *

[EXHIBIT 6]

Case No.: E017343
LASC Case No.: BC 254638

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ANTHONY G. VASEK

Plaintiff/Appellant,

vs.

MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT et alia.,

Defendant/Respondent.

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL
[Code of Civil Procedure section 284]
DECLARATION OF DENNIS J. WALSH, ESQ.; AND
MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF; [PROPOSED] ORDER

(Filed Sep. 6, 2001)

DENNIS J. WALSH, Esq.
(CSB 106646)
WALSH & DECLUES, LLP
Attorneys at Law
15821 Ventura Boulevard,
Suite 625
Encino, California 91436
Attorneys for Defendant/
Respondent MT. SAN
JACINTO COMMUNITY
COLLEGE DISTRICT ET AL

Counsel for Defendants/Respondents Mt. San Jacinto Community College District, et al., hereby moves this Court for leave to withdraw as counsel of record on behalf of defendant/respondent, ROY MASON, III *only* pursuant to section 284 of the *Code of Civil Procedure.* The Declaration of Dennis J. Walsh and a memorandum of points and authorities is filed herewith in support of this motion.

Respectfully Submitted,

WALSH & DECLUES, LLP
Attorneys at Law

DATED: September 4, 2001

By: /s/ D Walsh
DENNIS J. WALSH, Esq.
Attorneys for Defendants and
Respondents MT. SAN
JACINTO COMMUNITY
COLLEGE DISTRICT, ET. AL.

[EXHIBIT 7]

Anthony G. Vasek
P.O. Box 1551, San Jacinto, CA 92581-1551
(909) 336-3021

November 7, 2001

Dennis J. Walsh
WALSH & DECLUES
15821 Ventura Blvd., Suite 625
Encino, CA 91436

Re: Consolidated Case Nos. E017343, E019009 and E020125
Motion for Leave to Withdraw as Counsel of Record

Apparently, your law firm filed a motion for leave to withdraw as counsel of record. I did receive the Court of Appeal's order denying the motion, but I never received a copy of the motion itself. I would like my files to be complete: so, would you please send me a copy of the motion at your earliest convenience?

Thank you,

/s/ A. G. Vasek

Anthony G. Vasek
Plaintiff/Appellant in Pro Per

LAW OFFICES OF DENNIS J. WALSH
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Attorneys for Defendants
GWENDOLYN SCHLANGE, WAYNE STUART, ANN MOTTE, CLAIRE BROYLES, DON ROHRABACKER, ROBERT ROCKWELL, LAWRENCE BARKLEY, KARL SPARKS, MICHAEL TAUSIG, WALLY UPPER, M. ANNE WALKER, KELLY ROBERTS AND EUGENE KADOW, (employees of a public entity, sued individually)

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE – CENTRAL DISTRICT

ANTHONY G. VASEK, Plaintiff, vs. MT. SAN JACINTO COLLEGE DISTRICT, et al., Defendant.	) CASE No.: 254638) (Reassigned to Judge Charles D. Field, Dept.5)) OPPOSITION OF DEFENDANTS TO PLAINTIFF'S MOTION FOR CONTINUANCE AND REQUEST FOR SANCTIONS; AND REQUEST FOR SANCTIONS) Date: July 18, 2002) Time: 8:30 a.m.) Dept. 5) (Filed Jul. 08, 2002)

TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

Defendants GWENDOLYN SCHLANGE, WAYNE STUART, ANN MOTTE, CLAIRE BROYLES, DON ROHRABACKER, ROBERT ROCKWELL, LAWRENCE BARKLEY, KARL SPARKS, MICHAEL TAUSIG, WALLY UPPER, M. ANNE WALKER, KELLY ROBERTS AND EUGENE KADOW, (employees of a public entity, sued individually) (hereinafter referred to as "defendants") hereby oppose plaintiff's motion for continuance and request for sanctions as follows.

1) Plaintiff has failed to give timely statutory notice of his motion and request for sanctions in that plaintiff served his notice of motion by mail less than 26 days prior to the date of hearing.

2) Plaintiff's request for continuance, a de facto stay, of the trial court proceedings is without sufficient basis as the purported "missing defendants" bear no relevance to the trial court proceedings in this action.

3) Plaintiff's request for sanctions is without justification.

Defendants request that sanctions be impose [sic] upon plaintiff Anthony Vasek, in pro per, in the sum of $1295.00 for having to oppose plaintiff's frivolous motion.

DATED: July 8, 2002

LAW OFFICES OF DENNIS J. WALSH, APC.

By: /s/ George Ordonez
DENNIS J. WALSH, ESQ.
GEORGE E. ORDONEZ, ESQ.
Attorneys for Defendants
GWENDOLYN SCHLANGE, WAYNE STUART, ANN MOTTE, CLAIRE BROYLES, DON ROHRABACKER, ROBERT ROCKWELL, LAWRENCE BARKLEY, KARL SPARKS, MICHAEL TAUSIG, WALLY UPPER, M. ANNE WALKER, KELLY ROBERTS AND EUGENE KADOW, (employees of a public entity)

MARIA C. ROBERTS, State Bar No. 137907
MARK T. PETERSEN, State Bar No. 163962
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Attorneys for Defendant ROY B. MASON, II

SUPERIOR COURT OF CALIFORNIA –
RIVERSIDE COUNTY

ANTHONY G. VASEK, Plaintiff, vs. MT. SAN JACINTO, et al. Defendants.	CASE NO. CIV254638 Action Date: Aug. 26, 1994 Judge: Hon. Charles D. Field Department 5 DEFENDANT ROY B. MASON'S OPPOSITION TO PLAINTIFF'S MOTION FOR CONTINUANCE OF TRIAL COURT PROCEEDINGS Date: July 18, 2002 Time: 8:30 a.m. Dept: Dept. 5 Trial: Not Set (Filed Jul. 08, 2002)

I. STATEMENT OF THE CASE

This case was filed nearly eight years ago, when Plaintiff ANTHONY VASEK ("VASEK" or Plaintiff), a professor at Mt. San Jacinto Community College sued

public and private entities and individuals for allegedly subjecting him to oppressive retaliatory treatment for voicing opposition against the College's vocational drafting program. VASEK alleged no less than fourteen causes of action ranging from breach of contract, fraud, and defamation to negligence and conspiracy to deprive VASEK of his constitutional rights.

Defendant ROY B. MASON ("Dr. MASON") is a peripheral Defendant in this action, as Plaintiff admits in his pleadings that Dr. MASON did not become the superintendent/president of the College until January of 1994, long after most of the events alleged by VASEK occurred.

During the nearly eight years that this action has been pending, multiple amended complaints were filed by VASEK in response to successful demurrers filed by various Defendants. One such demurrer was that by Dr. MASON (and other Defendants) to Plaintiff's Third Amended Complaint in 1995, which was sustained without leave to amend. This decision was appealed by Plaintiff. Plaintiff's appeal resulted in the Fourth District Court of Appeal issuing a limited order of reversal, allowing Plaintiff to proceed on a cause of action against Dr. MASON in his individual capacity for alleged violation of 42 U.S.C. section 1983. That is the only cause of action currently pending against Dr. MASON, to which Dr. MASON filed a demurrer, which is scheduled for hearing on July 25, 2002.

After the appeal but prior to remand by the Court of Appeal, VASEK filed four additional amended complaints, and today VASEK is under order of this Trial Court to file another amended complaint in response to the successful motion for judgment on the pleadings filed by Co-Defendants KAREN SUE GROSZ and PHIL HARTLEY.

Recently, VASEK has refused to respond to interrogatories propounded by Defendants GROSZ and HARTLEY, which resulted in a motion to compel and Court order requiring VASEK to provide responses. Defendants GROSZ and HARTLEY also recently filed another motion to compel against VASEK for VASEK's failure to respond to an inspection demand. Similarly, VASEK's refusal to attend his regularly noticed deposition forced Dr. MASON to file a motion to compel VASEK's attendance at his deposition, which motion was granted on July 8, 2002. The delays and obfuscation by VASEK cannot be permitted to continue.

The excuse VASEK has relied upon for his refusal to respond to recent discovery attempts is the so-called "missing" or "disenfranchised" defendants. At the hearing on June 17, 2002 related to GROSZ and HARTLEY's motion for judgment on the pleadings and motion to compel this Court advised VASEK that the status of the purported "missing defendants" is of no consequence to VASEK and his responsibility to respond to discovery or prosecute this lawsuit. Despite the Court's statements, VASEK continues to attempt to delay the resolution of this cast, by way of the pending "Motion for Continuance." However, the excuse of the "missing defendants" is equally unavailing with respect to the motion for continuance.

In addition, the motion for continuance has been improperly noticed and lacks any identifiable legal basis. When considered in light of the fact that this case has been pending for eight years and has yet to progress beyond the pleading stage, there simply is no justifications to impose a stay of any duration on this action. Therefore, the motion for continuance should be denied.

II. LEGAL ARGUMENT

A. THE PURPORTED "MISSING DEFENDANTS" DO NOT PROVIDE A BASIS FOR CONTINUANCE OF THIS ACTION.

In the original brief in support of his motion and the "addenda" to the motion that was recently filed, VASEK spends an inordinant amount of time arguing that certain "missing" or "disenfranchised" defendants (i.e., those who apparently are not currently represented by counsel) require that this case be "continued" (i.e., stayed), apparently only for the purpose of permitting VASEK to avoid responding to discovery and otherwise prosecute his case. The argument is specious and does not provide a basis for a stay of this action.

Whether or not a party has correctly or sufficiently substituted counsel for themselves is of no concern to VASEK. As held in *Department of Public Works v. Daisy Thorpe Hook* (1967) 248 Cal.App.2d 618, 624:

> It is not incumbent upon litigants to investigate the relationship between opposing attorneys of record and their clients. In the absence of actual and timely notice, they and the courts have every right to rely upon the court records as binding upon both litigants and the attorneys appearing of record in their behalf. [Emphasis added.]

Based on the foregoing, it is *not* VASEK's job to go about investigating which Defendant has which attorney in this matter. Perhaps most importantly, VASEK has provided no authority whatsoever that purported confusion over the status of certain parties' attorneys in this action should relieve him from responding to discovery or

seeking leave to amend his complaint, or otherwise block the progress of this action.

The standard procedure by which attorneys are substituted to change is found in Code of Civil Procedure sections 284 and 285. "There is no question that a client can discharge his attorney of record at any time and substitute another in his place. [Citations]. However, in order to do so he must conform to the requirements set forth in [C.C.P.] sections 284 and 285." *Forslund v. Forslund* (1964) 225 Cal.App.2d 476, 488. "Accordingly, where a party who has appeared in an action by an attorney thereafter takes part in the proceedings in propria persona without following the procedure prescribed in sections 284 and 285, subsequent pleadings and notice therein are nevertheless properly served upon the attorney who has appeared for such party." *Id.*

Accordingly, if certain parties in this action have changed attorneys, or attempted to change attorneys, but have not completed the process in a proper manner (about which Dr. MASON offers no opinion), it is of no consequence to VASEK's discovery or other obligations he has as the Plaintiff. VASEK's self-appointed role as an investigator into the purported "missing defendants" has no relevance to the requirement that he attend his deposition, provide meaningful responses to proper questions or provide documents in response to document demands. The busy-work undertaken by VASEK to purportedly determine who represents the so-called "missing defendants" is nothing more, in reality, then a ploy to evade discovery and unnecessarily slow the progress of this litigation. Simply put, VASEK has not demonstrated that this action must be placed on indefinite hold or that the "missing defendants" bar him from participating in the matters

which he must as a party; namely, discovery, filing amended pleadings and preparing his case for trial. Any halt on the progress of this action at this extremely late stage is unwarranted, abuses the notion of judicial economy and will serve no one other than VASEK and his desire to avoid actual resolution of this action.

MASON and other Defendants are entitled to defend themselves in this action and to test the evidence VASEK has, if any, in support of his various claims. The requested stay would only delay this proper course of events. Therefore, the request for "continuance" or stay should be denied.

B. THE MOTION WAS NOT PROPERLY NOTICED

Pursuant to Code of Civil Procedure ("CCP") section 1005(b), all moving and supporting must be "filed and served at least 21 calendar days before the hearing." If the moving papers are served by mail, an additional five days are added to the service period of 21 days, which requires that the moving papers be served no later than 26 days before the hearing date. CCP section 1013(a).

Contrary to the service requirements, VASEK served his notice of motion by mail on June 26, 2002, only 22 days prior to July 18. Given the lack of sufficient notice of the motion by VASEK, Dr. MASON hereby objects separately on this ground to the motion in its entirety.

C. VASEK HAS OTHER REMEDIES FOR HIS VARIOUS REASONS FOR SEEKING A STAY

In his moving papers, VASEK complains that it would be "legally impermissible and morally insufferable" if a

stay was not granted due to the purported inability to allege "the true and complete facts of his case without exposing his complaint to fatal attack." (Addendum to Motion, p. 2, 11, 13-17.) However, VASEK provides no legal authority in support to this assertion. Nor does he acknowledge that the proper remedy for his purported difficult situation is a motion for leave to file an amended complaint to add the "missing defendants."

Indeed, at the recent hearing on Defendant GROSZ and HARTLEY's motion for judgment on the pleadings, this Court advised VASEK that if he wished to include the "missing defendants" in an amended complaint he should file a motion for leave to amend. A motion for leave to file an amended complaint for the purpose of including the "missing defendants" would also correct VASEK's argument regarding alleged "meaningless pleadings." (See Addendum to Motion, p.2, l. 19 – p.3, l. 7.) In any event, a stay of this entire action is not necessary for VASEK to seek to include the "missing defendants" in this action. Therefore, this alleged ground for the motion should be disregarded.

D. VASEK IS NOT SUBJECT TO "OPPRESSIVE DEPOSITIONS" AS CLAIMED.

VASEK also attempts to persuade this Court that an indefinite stay is necessary in order to avoid "oppressive depositions" of VASEK. This argument, however, is not supported by any facts as required under the *West Pico* standard invoked by VASEK.

VASEK claims that he will "have to suffer through the ordeal of a long and tedious deposition" more than once if the "missing defendants" are not "restored" to this action.

(Addendum to Motion, p. 3, ll. 16-19.) The legal authority relied upon by VASEK for this position is the case of *West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417. However, VASEK failed to describe how his deposition would be oppressive under the *West Pico Furniture* standard.

West Pico Furniture specifically holds that "oppression must not be equated with burden" and an objection based on burden "must be sustained *by evidence showing the quantum of work required*, while to support an objection of oppression *there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought.*" *Id.* at 417 (emphasis added.) With these standards in mind, VASEK has failed to demonstrate in his motion (or anywhere else) "the quantum of work required" in appearing for his deposition. Instead, VASEK merely complains of "an enormous amount of time and energy" on his part. This is nowhere near a sufficient showing of the "quantum of work" required to support an objection based on burden – and certainly not sufficient to warrant a stay of this entire action while the so-called "missing defendants" are tracked down.

As for the purported oppression objection, VASEK has failed to present any argument or evidence of an intent by any Defendant in this action to create an "unreasonable burden" on VASEK, or that the ultimate effect of the burden (of being deposed) is "incommensurate with the result sought." *West Pico Furniture, supra*, 56 Cal.2d at 417. Instead, VASEK merely complains of his purported "suffering" that he will have to undergo if his deposition is taken more than once. This unsupported lament by

VASEK falls short of the *West Pico* standard for sustaining an oppression objection as set forth above.

The fact is, VASEK filed this lawsuit against approximately 47 defendants through some 14 causes of action for, among other things, breach of contract, fraud, defamation, negligence and conspiracy to deprive him of his constitutional rights. Such allegations are serious, factually-intensive and require that discovery be sought from and furnished by VASEK. If VASEK wishes to evade discovery, he can attempt to do so by way of a motion for protective order. A stay of this action simply is not necessary.

VASEK was recently *ordered* by this Court to respond to special interrogatories served by other Defendants in this action. Similarly, VASEK's obstinance required Dr. MASON to file a motion to compel his deposition, which motion was granted on July 8, 2002.[1] It is clear that VASEK has attempted to exercise his own stay of this action by his unilateral refusal to participate in discovery. Such frivolous and avoidance tactics must be stopped. To delay this action any longer will only add to the cost of this litigation, unduly delay preparation for trial and continue to provide VASEK with a false sense of immunity from having to prove his case while he allegedly chases the so-called "missing defendants."

---

[1] On July 8, 2002, this Court granted Dr. MASON's motion to compel the deposition of VASEK, including the imposition of sanctions against VASEK in the amount of $750. Accordingly, VASEK's arguments related to his deposition in his motion for continuance are irrelevant.

E. THE CLAIMED IMPACT ON A SUMMARY JUDGMENT MOTION IS NOT SUPPORTED BY AUTHORITY.

In a last desperate attempt to stay this action, VASEK argues that statements he makes in his upcoming deposition will be considered "inadmissible as hearsay" if the stay is not granted to bring the "missing defendants" into this action, and further declares that inclusion of the "missing defendants" prior to his deposition will transform his otherwise hearsay testimony into "admissible" statements. (Addendum to Motion, p. 4, ll. 2-8.) He further alleges that this is critical for some supposed motion for summary judgment. This argument fails to include, however, any description of the anticipated testimony, any description of the supposed motion for summary judgment, or any legal authority. In other words, the argument is based entirely on assumptions and speculation.

Again, a stay is not necessary to resolve the issue of the "missing defendants." If VASEK wishes to add parties to this action, he has a remedy in the form of a motion for leave to file an amended complaint. See, CCP section 473(a). If VASEK convinces this Court that an amendment is proper, then an amendment can be permitted. Otherwise, VASEK will have to litigate this matter on the terms and with the parties as set forth.

Dr. MASON has a right to defend himself in this matter, to have his demurrer heard as scheduled (on July 25, 2002) and to conduct discovery of VASEK to determine the specific facts and evidence which VASEK has, if any, to support the allegations against Dr. MASON. A stay of this action is not warranted, it is not necessary and will serve no purpose other than to further stall this litigation, which has already been floundering for nearly eight years.

To order a stay at this stage would add insult to injury and further delay the justice which Dr. MASON seeks. Accordingly, the stay or "continuance" sought by VASEK should be denied.

III. CONCLUSION

VASEK has failed to provide any compelling reasons for ordering a stay of this action. As this case has already languished for nearly eight years, a stay to sort out the purported "missing defendants" would only add to the vast delay and expense incurred by the Defendants in responding to VASEK's expansive allegations. The plight of the "missing defendants" does not relieve VASEK from his burden to respond to discovery and prove his claims.

Other remedies may be employed by VASEK to seek clarification of the parties and duplicative discovery, such as a motion for leave to amend and protective orders. Therefore, the stay or "continuance" sought by VASEK should be denied, in its entirety.

Respectfully submitted,

Dated: July 8, 2002

CHAPIN SHEA McNITT & CARTER

/s/ Mark Petersen
Maria C. Roberts
Mark T. Petersen
Attorneys for Defendant
ROY B. MASON II

Anthony G. Vasek
23345 Caminito Telmo, Laguna Hills, CA 92653
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July 19, 2002

Court of Appeal [FILED 7/19/02]
Fourth Appellate District,
Division Two
3389 Twelfth St.
Riverside, CA 92501

Re: *Vasek v. Mt. San Jacinto College District et al.*
Appeal Nos. **E017343**, E019009, E020125
Supplemental Letter Memorandum of Points and Authorities Based on Recent Developments Significantly Impacting Vasek's Pending Second Renewed Motion to Recall Remittitur

TO PRESIDING JUSTICE RAMIREZ AND THE ASSOCIATE JUSTICES:

The following analysis of recent developments at the trial court level shows that it is absolutely essential that this Court of Appeal, acting on Plaintiff/Appellant Vasek's pending Second Renewed Motion to Recall Remittitur, recall its remittitur and state clearly that the "disenfranchised" defendants were intended by this Court to be party defendants in the within remanded action.

I. WHAT OCCURRED IN THE COURT OF APPEAL GOVERNS.

In response to Vasek's motion for a continuance of the trial court proceedings pending the outcome of Vasek's Second Renewed Motion to Recall Remittitur filed in this Court of Appeal, Defendant/Respondent Mason claims, in his opposition to Vasek's motion for continuance, that a

stay is not necessary to resolve the issue of the "disenfranchised" defendants. (A Copy of said opposition is attached hereto, marked Exhibit A, and made a part hereof.) Specifically, Mason states on page 8 of Exhibit A:

> "If VASEK wishes to add parties to this action, he has a remedy in the form of a motion for leave to file an amended complaint. See, CCP section [sic] 473(a). If VASEK convinces this Court that an amendment is proper, then an amendment can be permitted. *Otherwise, VASEK will have to litigate this matter on the terms and with the parties as set forth.*" (Emphasis is added.)

In essence, therefore, this passage suggests that counsel's unilateral removal of the "disenfranchised" defendants from the list of parties to the appeal, without leave of court, operates as a valid dismissal. That clearly is nonsense; but, when Vasek quoted this passage at the hearing of said motion for continuance, the trial court, in its response, left the door open to the possibility that it might choose to uphold the "disenfranchised" defendants' exclusion from the within remanded case.

What the trial court and defendants don't seem to understand is that the "disenfranchised" defendants' status in the trial court is governed *solely* by their status in the Court of Appeal. Since the "disenfranchised" defendants were proper parties to the appeal, and since said defendants were never dismissed by this Court – they were merely dropped from the list of parties to the appeal through an error induced by their counsel's reckless mistake – Vasek is entitled, *as of right*, to have the "disenfranchised" defendants appear in the trial court as proper defendants to answer Vasek's complaint. *Vasek cannot be required to first go through the time and expense of filing a*

motion pursuant to CCP §473(a) – and the possibility of having to appeal an adverse ruling – in order to obtain something which he can, ***and does demand, as of right.***

This Court of Appeal, therefore, is duty bound to recall its remittitur for the purpose of making clear that the Court of Appeal had *not* dismissed the "disenfranchised" defendants, but rather that it had intended to have the "disenfranchised" defendants *continue as party defendants in the within action.* To do otherwise would endorse counsel's unilateral removal of the "disenfranchised" defendants from the list of proper defendants/respondents as a form of acceptable dismissal. That would not only be ludicrous and insulting to one's intelligence but also contrary to the judicial instinct and inimical to the interests of justice.

II. THE "DISENFRANCHISED" DEFENDANTS BEAR GREAT RELEVANCE TO THE TRIAL COURT PROCEEDINGS.

Indeed, the attorneys for District Defendants – i.e., the very attorneys who unilaterally dropped the "disenfranchised" defendants from the list of proper defendants/respondents – would have us believe that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action." (See the bottom of page 1 of District Defendants' opposition, a copy of which is attached hereto, marked Exhibit B, and made a part hereof.) Whom are they trying to kid?

The gravamen of Plaintiff's motion pending before this Court of Appeal – and of all of his pleadings at the trial court level so far – is simple and reasonable. Plaintiff has every right to protect his interests in this litigation;

and the interests in question at this point in time are twofold.

First, Plaintiff wishes to preserve his right to limit his exposure to depositions as provided by CCP §2025(t). Second, Plaintiff has the right, and he wishes to exercise the right, to file an amended complaint of the sort envisioned by the Court of Appeal as expressed in its opinion – i.e., one that would allow Plaintiff to allege a *continuing* violation *more succinctly* and *more completely* than any of his previous complaints did or could do because of the *ongoing* nature of the mistreatment he suffered (which culminated in the bringing of more than 40 trumped-up charges for dismissal against him).

If both of these very proper and very legitimate interests are to be safeguarded, *logic* ***dictates*** that the question of the "disenfranchised defendants" *must* ***first*** *be resolved*. Here are the two simple syllogisms.

First, if the "disenfranchised" defendants are considered *dismissed* by the trial court – and indeed they are now so considered – they need not be served; and if they are not served, they are not subject to the provisions of CCP §2025(t); and if they are not subject to the provisions of CCP §2025(t), then Plaintiff's interests in this litigation will have been compromised when said "disenfranchised" individuals are later restored as party defendants in the within action. Why should *Vasek* be made to pay such consequences for the mistakes of District Defendants' counsel?

Second, if the "disenfranchised" defendants are considered *dismissed* by the trial court – and indeed they are now so considered – their inclusion in a complaint would render the complaint fatally defective with respect

to said defendants; and as a result, Plaintiff's interests in this litigation would be compromised because said "disenfranchised" defendants would not be made to answer Vasek's complaint, and any legitimate injuries he might have sustained as a result of their wrongful conduct would not be compensated. Again, why should *Vasek* be made to pay such consequences for the mistakes of District Defendants' counsel?

The inevitable conclusion which results, no matter which of the two syllogisms is followed, is the same as before – i.e., this Court of Appeal is duty bound to recall its remittitur for the purpose of making clear that the Court of Appeal had *not* dismissed the "disenfranchised" defendants, but rather that it had intended to have the "disenfranchised" defendants *continue as party defendants in the within action*. Again, to do otherwise would endorse counsel's unilateral removal of the "disenfranchised" defendants from the list of proper defendants/respondents as a form of acceptable dismissal. That would not only be ludicrous and insulting to one's intelligence but also contrary to the judicial instinct and inimical to the interests of justice.

III. THIS COURT OF APPEAL SHOULD DELAY RE-ISSUING ITS REMITTITUR TO GIVE VASEK THE OPPORTUNITY TO FILE A MOTION TO LIFT THE MONETARY SANCTION IMPOSED ON VASEK BY THE TRIAL COURT FOR HIS HAVING ADVOCATED ARGUMENTS DIRECTLY RELATED TO THE QUESTION OF THE "DISENFRANCHISED" DEFENDANTS.

At a hearing on Defendant/Respondent Mason's motion to compel compliance with a deposition notice which Vasek opposed on grounds similar to that stated in

his Second Renewed Motion to Recall Remittitur and this letter memorandum – i.e., that the restoration of the "disenfranchised" defendants *prior* to the conduct of a deposition was necessary if Vasek's right to limit his exposure to depositions was to be preserved pursuant to CCP 2025(t) – the trial court declared Vasek's arguments "silly" and imposed a sanction of $750 upon Vasek for supposedly wasting the trial court's time. (A copy of the transcript of oral proceedings had before the Honorable Charles D. Field on July 8, 2002, is attached hereto, marked Exhibit C, and made a part hereof.) Vasek believes the imposition of the sanction was unjust and would like the opportunity to file in this Court of Appeal a motion for an order lifting said sanction. Therefore, if this Court of Appeal decides to recall its remittitur, Vasek asks this Court to delay re-issuance of its remittitur so that Vasek might file said motion.

By his signature below, Vasek declares under penalty of perjury that he has read the contents of this letter memorandum and that all statements of fact contained therein are known by him to be true and correct.

Respectfully submitted,

Anthony G. Vasek
Plaintiff/Appellant in Pro Per

Attachments: Exhibits A, B, and C
Proof of Service

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ANTHONY G. VASEK, Plaintiff and Appellant, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants and Respondents.	E017343 and E020125 (Super.Ct.No. 254638) The County of Riverside
ANTHONY G. VASEK, Plaintiff and Appellant, v. ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES et al., Defendants and Respondents.	E019009 (Super.Ct.No. 254638) The County of Riverside (Filed Jul. 25, 2002)

THE COURT

Appellant's motion filed June 21, 2002, to recall the remittitur is DENIED for lack of good cause. In so ruling the court has also considered appellant's letter filed July 19, 2002.

Appellant contends that the remittitur should be recalled to permit this court to clarify the disposition citing *Ruth v. Lytton Sav. & Loan Assn.* (1969) 272 Cal.App.2d 24, 25.

This court reversed the superior court's "order sustaining District's demurrer as to District officials, including

District Board members, acting in their personal capacities." (Opn. filed Oct. 4, 2001, p. 71.) That order was filed in the superior court on September 5, 1995, and lists the individual defendants dismissed. Therefore, this court's reversal of that order vacated the dismissal as to each of the individual defendants listed in the order. Those same individual defendants were represented by Dennis J. Walsh and his firm throughout the appeal proceedings according to filings received from Mr. Walsh as early in the appellate process as October 29, 1996, and as late as September 6, 2001. Mr. Walsh's motion filed on the latter date to withdraw as counsel for one of these individual defendants was denied on September 12, 2001, and Mr. Walsh filed no further motions to withdraw. Thus, the individual defendants listed in the September 5, 1996, dismissal order were represented by Mr. Walsh and his firm throughout the appellate proceedings. This means that these individual defendants were bound by this court's reversal, which entitles plaintiff to proceed against them in the superior court in their individual capacities. (As to further proceedings respecting deceased defendants, see Code Civ. Proc., § 377.40 et seq.) Therefore, the remittitur need not be recalled as requested by appellant to clarify that all such District officials and board members may no longer be considered dismissed from the case, because the scope and effect of the reversal of the order dismissing them is clear on the record and as a matter of law. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 758, p. 783, ¶ (a) [effect of reversal].)

RAMIREZ

Presiding Justice

cc: See attached list

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION II

ANTHONY G. VASEK, Plaintiff/Appellant, vs. MT. SAN JACINTO COLLEGE DISTRICT, et al., Defendant/Respondent.	DCA E-033583 CASE NO. CIV-254638 VOLUME I of I Pages 1 through 122

REPORTER'S TRANSCRIPT ON APPEAL

Proceedings held before the Hon. Charles D. Field, Anne Yettke, Judge Pro Tem, Hon. Robert G. Spitzer, Patricia Rich, Judge Pro Tem, Robert Schnabel, Judge Pro Tem, Hon. Dallas Holmes, 5-1-02, 6-10-02, 6-17-02, 7-8-02, 7-18-02, 8-2-02, 9-27-02, 10-11-02, 11-27-02, 3-5-03

APPEARANCES:

For the Plaintiff/ Appellant:	IN PROPRIA PERSONA ANTHONY G. VASEK 23345 Caminito Telmo Laguna Hills, CA 92653
For the Defendants/ Respondents Grosz and Hartley:	STATE OF CALIFORNIA DEPARTMENT OF JUSTICE By: DANA T. CARTOZIAN, Deputy 300 South Spring Street Suite 5000 Los Angeles, CA 90013

For the District Defendants/Resps:	OFFICE OF DENNIS J. WALSH By: GEORGE E. ORDONEZ, Esquire and STEPHAN BIRGEL, Esquire 15821 Ventura Boulevard, Suite 465 Encino, CA 91436
For the Defendants/ Respondents Gordon and Atkinson:	ATKINSON, ANDELSON, LOYA RUUD & ROMO By: JOHN W. DIETRICH, Esquire 3612 Mission Inn Avenue Riverside, CA 92501
For the Defendant/ Respondent Mason:	CHAPIN, SHEA, McNITT & CARTER By: MARIA C. ROBERTS, Esquire 501 West Broadway 15th Floor San Diego, CA 92101-3541
For the Defendant/ Respondent Lapp:	GILBERT, KELLY, CROWLEY & JENNETT By: WILLIAM A. PENNELL, Esquire and SHELLY ZEISE, Esquire 3801 University Avenue Suite 700 Riverside, CA 92501
Reported by:	Adele Frazier, CSR #9690 Shari Layton, CSR #6256 Denise Fringer, CSR #10283 Cecilia Sevilla, CSR #12051 Daphné Beckwith, CSR #8458 Official Court Reporters Riverside Superior Court

* * *

[108] THE COURT: I am granting the motion to strike indicating in passing that that moots the demurrer which is well taken. And I am awarding sanctions against the plaintiff pursuant to CCP 128.5 in the sum of $350 for

amending the complaint to add the second cause of action after having been specifically instructed to amend the allegations only as to defendants Grosz and Hartley.

This is frivolous conduct with the meaning of CCP section 128.5 and justifies the imposition of sanctions. Those sanctions are to be paid within 30 days. I have noted Ms. Roberts' arguments. I think they are well made. And I will remember them should we be faced [109] with this kind of frivolous conduct again since CCP 128.5 will continue to apply to this case until its conclusion.

ANTHONY VASEK: Your Honor, if I –

THE COURT: I'm sorry. I am not finished.

And I am denying joinder by Keenan & Associates.

The second demurrer for the Lapp demurrer, I am overruling the demurrer and granting the motion to strike for the reasons stated. Please pay attention to this, Mr. Vasek, because it is an important step I want to take here to make this a cleaner case to proceed with. Otherwise, it's just impossible to get a handle on who is answering which complaint.

Since I am sustaining the demurrers filed by the other parties with leave to amend, Mr. Pennell, the time for Lapp to answer I think could be extended to 30 days after that amended complaint is filed, and I will so order.

Also, as I said, please pay attention to this, Mr. Vasek. Any new amended complaint will be the operative complaint as to all defendants so we can begin to get past the problem which currently exists where different amended complaints constitute the operative complaint as to various defendants. I can't think of any other way to do it.

We've got to have some way to go forward here should you decide to do so.

ANTHONY VASEK: So I am not restricted in amending my complaint? I am not restricted as to any particular party? They can all be –

[110] THE COURT: No. No. That's not what I said. I said I want you to put together, combine all these results so that we have one document that takes care of it. You don't do anything new. That's why you need counsel. When you start adding new things, you get in trouble and you violate my orders and get sanctioned. This is not a start over order. This is an attempt to get the new amended complaint to be the operative complaint. That's then what Mr. Pennell answers, and we will go forward from there should you wish to do so.

* * *

Anthony G. Vasek, In Pro Per
23345 Caminito Telmo
Laguna Hills, CA 92653
(949) 697-4268

[FILED 8/20/02]

IN THE SUPERIOR COURT

OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

ANTHONY G. VASEK Plaintiff, -vs- MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants.	) Case No. 254638) Dept. 5) (Judge Charles Field)) MOTION TO STRIKE DEFENDANTS' PLEADINGS AND TO VACATE COURT ORDERS ASSOCIATED THEREWITH AFTER A RULING BY THE COURT OF APPEAL ON 7/25/02; DECLARATION OF PLAINTIFF) Date: 9/18/02) Time: 8:30 a.m.) Department: 11

Plaintiff Anthony G. Vasek (hereinafter "Vasek") hereby moves this Court for an order striking all pleadings, which were *not* served upon *all* parties, and vacating *all* trial court orders based on said pleadings – including, but not limited to, the trial court's order of July 8, 2002. This motion is based on: 1) the within memorandum of points and authorities; 2) the complete files and records of this action in the Riverside County Superior Court since remand; 3) the transcript of oral proceedings had in Department 5 of this Superior Court on July 8, 2002; 4)

Vasek's supplemental letter memorandum of points and authorities filed in the Court of Appeal on July 19, 2002, and served upon this Court by mail on July 19, 2002; 5) the Court of Appeal's order filed on July 25, 2002, a copy of which was mailed by the Court of Appeal to this Superior Court; and 6) the declaration of Anthony G. Vasek submitted herewith.

Date: 8/19/02

Anthony G. Vasek,
Plaintiff in Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

I. DISCUSSION

On June 21, 2002, Vasek filed in the Court of Appeal a motion to recall the appellate court's remittitur for the purpose of making clear that the defendants – whose names had been removed from the list of proper defendants/respondents through a clerical error induced by their counsel's recklessness – were indeed intended by the Court of Appeal to continue to be party defendants in the within remanded action. On July 19, 2002, Vasek filed in the Court of Appeal a supplemental letter memorandum of points and authorities, complaining about the trial court's actions; to wit,

> "What the trial court and defendants don't seem to understand is that the 'disenfranchised' defendants' status in the trial court is governed *solely* by their status in the Court of Appeal. Since the 'disenfranchised' defendants were proper parties to the appeal, and since said defendants were never dismissed by this Court – they were merely dropped from the list of parties to the appeal through an error induced by

their counsel's reckless mistake – Vasek is entitled, *as of right*, to have the 'disenfranchised' defendants appear in the trial court as proper defendants to answer Vasek's complaint. *Vasek cannot be required to first go through the time and expense of filing a motion pursuant to CCP §473(a) – and the possibility of having to appeal an adverse ruling – in order to obtain something which he can,* ***and does demand, as of right.***

* * *

"Indeed, the attorneys for District Defendants – i.e., the very attorneys who unilaterally dropped the 'disenfranchised' defendants from the list of proper defendants/respondents – would have us believe that 'the purported "missing defendants" bear no relevance to the trial court proceedings in this action.' [Reference.] Whom are they trying to kid?

"The gravamen of Plaintiff's motion pending before this Court of Appeal – and of all of his pleadings at the trial court level so far – is simple and reasonable. Plaintiff has every right to protect his interests in this litigation; and the interests in question at this point in time are twofold.

"First, Plaintiff wishes to preserve his right to limit his exposure to depositions as provided by CCP §2025(t). Second, Plaintiff has the right, and he wishes to exercise the right, to file an amended complaint of the sort envisioned by the Court of Appeal as expressed in its opinion – i.e., one that would allow Plaintiff to allege a *continuing* violation *more succinctly* and *more completely* than any of his previous complaints did or could do because of the *ongoing* nature of the mistreatment he suffered (which culminated in the bringing of more than 40 trumped-up charges for dismissal against him).

"If both of these very proper and very legitimate interests are to be safeguarded, *logic* ***dictates*** that the question of the 'disenfranchised defendants' *must* ***first*** *be resolved.* Here are the two simple syllogisms.

"First, if the 'disenfranchised' defendants are considered *dismissed* by the trial court – and indeed they are now so considered – they need not be served; and if they are not served, they are not subject to the provisions of CCP §2025(t); and if they are not subject to the provisions of CCP §2025(t), then Plaintiff's interests in this litigation will have been compromised when said 'disenfranchised' individuals are later restored as party defendants in the within action. Why should *Vasek* be made to pay such consequences for the mistakes of District Defendants' counsel?

"Second, if the 'disenfranchised' defendants are considered *dismissed* by the trial court – and indeed they are now so considered – their inclusion in a complaint would render the complaint fatally defective with respect to said defendants; and as a result, Plaintiff's interests in this litigation would be compromised because said 'disenfranchised' defendants would not be made to answer Vasek's complaint, and any legitimate injuries he might have sustained as a result of their wrongful conduct would not be compensated. Again, why should *Vasek* be made to pay such consequences for the mistakes of District Defendants' counsel?

"The inevitable conclusion which results, no matter which of the two syllogisms is followed, is the same as before – i.e., this Court of Appeal is duty bound to recall its remittitur for the purpose of making clear that the Court of Appeal had *not* dismissed the 'disenfranchised' defendants, but rather that it had intended to have the 'disenfranchised' defendants *continue as party defendants in the within action.*

> Again, to do otherwise would endorse counsel's unilateral removal of the 'disenfranchised' defendants from the list of proper defendants/respondents as a form of acceptable dismissal. That would not only be ludicrous and insulting to one's intelligence but also contrary to the judicial instinct and inimical to the interests of justice."

The Court of Appeal agreed with Vasek's analysis. In an order filed on July 25, 2002, a copy of which is in the Superior Court's file, the Court of Appeal held as follows:

> "This court reversed the superior court's 'order sustaining District's demurrer as to District officials, including District Board members, acting in their personal capacities.' (Opn. Filed Oct. 4, 2001, p. 71.) That order was filed in the superior court on September 5, 1995, and lists the individual defendants dismissed. Therefore, this court's reversal of that order vacated the dismissal as to each of the individual defendants listed in the order. Those same individual defendants were represented by Dennis J. Walsh and his firm throughout the appeal proceedings according to filings received from Mr. Walsh as early in the appellate process as October 29, 1996, and as late as September 6, 2001. Mr. Walsh's motion filed on the latter date to withdraw as counsel for one of these individual defendants was denied on September 12, 2001, and Mr. Walsh filed no further motions to withdraw. Thus, the individual defendants listed in the September 5, 199[5], dismissal order were represented by Mr. Walsh and his firm throughout the appellate proceedings. *This means that these individual defendants were bound by this court's reversal, which entitles plaintiff to proceed against them in the superior court in their individual capacities.*" . . . Therefore, the remittitur need not be recalled as requested by appellant to clarify that all such District officials

> and board members may no longer be considered dismissed from the case, *because the scope and effect of the reversal of the order dismissing them is clear on the record and as a matter of law.* [Citation.]" (Emphases are added.)

The "disenfranchised" individuals, therefore, had been party defendants all along – a position Vasek had consistently maintained from the very beginning, much to the trial court's consternation.

A. Mason's Motion to Compel and the Trial Court's Order of 7/8/02

At the 7/8/02 hearing on Defendant Mason's motion to compel Vasek's compliance with a deposition notice – which Vasek opposed on grounds similar to those he enunciated in his aforementioned motion (and supplemental letter memorandum) pending before the Court of Appeal – the trial court declared Vasek's arguments "silly" and imposed a sanction of $750 upon Vasek for his having supposedly wasted the trial court's time. (Vasek asks the Court to take judicial notice of page 2 of the transcript of oral proceedings had in Department 5 of the Riverside County Superior Court on July 8, 2002, a copy of which is in the Superior Court's file as Exhibit A to Vasek's STATEMENT OF DISQUALIFICATION FOR CAUSE AGAINST JUDGE FIELD.)

Oral depositions in California are governed by CCP §2025. CCP §2025(c) states in pertinent part:

> "The notice of deposition *shall* be given *to every other party who has appeared in the action*. The deposition notice, or the accompanying proof of service, *shall* list

> *all* the parties or attorneys for parties on whom it is served." (Emphases are added.)

Since the "disenfranchised" individuals had been party defendants all along, Mason was *obliged* by CCP §2025(c) to serve them with his deposition notice. Mason, however, did not list the "disenfranchised" parties in his proof of service or his deposition notice. Vasek's opposition papers show that he objected to the defective notice and proof of service as soon as he became aware of the problem with the "disenfranchised" parties and within the time frame allotted by CCP §2025(g).

In view of the Court of Appeal's ruling on July 25, 2002, it is clear that the trial court was dead wrong when it characterized Vasek's arguments as "silly," imposed sanctions on him for "taking up the Court's time with such arguments," and compelled him to comply with a defective notice to which he had properly objected. In view of the Court of Appeal's ruling on July 25, 2002, it is also quite clear that Mason's motion to compel had to have been served upon *all* parties, including the "disenfranchised" parties.

This Court, therefore, should strike Mason's motion to compel and vacate the Court's order of July 8, 2002.

B. All of Defendants' Other Pleadings and the Trial Court's Orders Associated Therewith

It is an undisputed fact that all pleadings filed by parties to an action must be served upon *all* other parties who have appeared in the action. Indeed, the Court of Appeal immediately rejects papers submitted for filing if *all* parties have *not* been served. The same rule necessarily applies to the superior courts. Judge Field himself

recognized this during the 6/17/02 hearing of State Defendants' motion for judgment on the pleadings (cf., p. 16, line 18 of the transcript of oral proceedings had in Department 5 on June 17, 2002, a copy of which is in the Superior Court's file as Exhibit E to Vasek's STATEMENT OF DISQUALIFICATION FOR CAUSE AGAINST JUDGE CHARLES FIELD, of which Vasek asks this Court to take judicial notice):

> "But if you intend to ask that this matter be designated a complex case, I'm going to request that you file a motion to that effect. Is that clear, *so that everybody, **even the ones that are not here** have notice and knows what's up and what's at stake*?" (Emphases are added.)

Since the "disenfranchised" individuals had been party defendants all along (cf., the Court of Appeal's ruling of July 25, 2002), all defendants herein were *obliged* to serve copies of *all* of their pleadings, notices, requests for discovery, etc. upon *all* of the "disenfranchised" parties. This was *never* done by *any* of the defendants herein.[1]

The trial court's *repeated* failure to reject pleadings that were never served upon *all* of the "disenfranchised" parties *operated* as a denial by the trial court of Vasek's right to proceed against said defendants in the superior

---

[1] By contrast, Vasek had *always* effected service upon *all* of the "disenfranchised" defendants by serving copies of *all* of his papers upon Mr. Declues, Mr. Walsh's former law partner. Since neither Mr. Walsh, nor Mr. Declues, nor the Law Firm of Walsh & Declues had ever been granted leave to withdraw as counsel, those defendants, who did not *specifically* substitute the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues, can only be said to have continued to be represented by Mr. Declues regardless of the status of the Law Firm of Walsh & Declues.

court. Similarly, the trial court's *repeated* failure to adjudge defendants' requests for discovery as defective, on Vasek's proper objection thereto, also *operated* as a denial by the trial court of Vasek's right to proceed against said defendants in the superior court. Since Vasek's right to bring suit is constitutionally protected, the denial by the trial court of Vasek's right to proceed against said defendants in the superior court constitutes a 42 U.S.C. 1983 violation, in and of itself.

Therefore, *all* of defendants' pleadings filed but not served upon *all* of the "disenfranchised" parties (i.e., *all* of the pleadings filed to date by the defendants, up to and including the demurrers and motions to strike most recently filed in response to the eighth amended complaint, and the motions to tax Vasek's memorandum of costs on appeal) must be stricken from the record; and any and all of the trial court orders associated with said pleadings must be vacated.

II. CONCLUSION

For all of the foregoing reasons, this Court should grant Vasek's instant motion. To do anything less would make a mockery of the law.

Respectfully submitted,

Date: 8/19/02

_____

ANTHONY G. VASEK,
Plaintiff in Pro Per

DECLARATION OF ANTHONY G. VASEK

I, Anthony G. Vasek, declare as follows:

1. I am Plaintiff herein.

2. I have read the foregoing motion and accompanying memorandum of points and authorities.

3. I have personal knowledge of each of the facts set forth in said motion and memorandum, except as to those matters stated on information and belief.

4. All statements of fact contained in said motion and memorandum are declared by me to be true and correct, as though expressly stated in this declaration; and if called upon, I can testify competently thereto, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. This declaration is being executed on 8/19/02 at San Jacinto, California.

ANTHONY G. VASEK,
Plaintiff in Pro Per

Anthony G. Vasek
P.O. Box 1551, San Jacinto, CA 92581-1551
(949) 697-4268

December 9, 2005

Court of Appeal [FILED 12/9/05]
Fourth Appellate District, Division Two
3389 Twelfth St.
Riverside, CA 92501

Re: *Vasek v. Mt. San Jacinto College District et al.*,
Appeal No. E033583
Request that the Appellate Panel Be Identified
Request for Continuance of Oral Argument
and for Additional Time at Oral Argument

TO PRESIDING JUSTICE RAMIREZ:

1. The instant appeal relies heavily on the decision rendered in Appeal No. E017343. The form in which Appellant chooses to present his oral argument, therefore, will necessarily depend on whether or not the panel for the instant appeal is the same as the one that decided Appeal No. E017343. The deputy clerk, however, would not reveal to Appellant the makeup of the panel in the instant appeal. Appellant therefore requests that this Court direct the Clerk of this Court to reveal to Appellant the names of the justices who are sitting on the instant panel. Their identities, after all, will eventually be known.

2. Appellant filed his Confirmation of Oral Argument on November 21, 2005. Based on the clerk's notice "that scheduling oral argument may require up to 90 days," Appellant committed himself as a central character to an effort undertaken by members of the College's Theatre Arts Program. The pursuit of this effort will necessitate travel throughout southern California during the College's

semester break, and Appellant so informed the Clerk of this Court in a letter dated November 21, 2005 (*cf.*, Exhibit A). But, Appellant has just learned that oral argument in the instant case has been scheduled for January 4, 2006. Appellant's failure to honor his commitment to the effort undertaken by members of the College's Theatre Arts Program jeopardizes the effort's success. Appellant therefore requests that this Court continue oral argument to January 17 or 18, or any morning *after* January 22, 2006. (It is not possible for Appellant to appear on January 19 and 20 because of day-long *mandatory* meetings that have been scheduled by the College on those days. Appellant's absence on those days would result in loss of pay.)

3. In Appellant's opinion, the Court's tentative decision is decidedly one-sided and does not comport with the facts reflected in the record. To address what Appellant perceives as the Court's errors, it will be necessary for Appellant to cite many portions of the record. Appellant estimates that he will need 30 minutes just to present his arguments in chief. In addition, Appellant requests time to reply to each of respondents' arguments in an amount equal to the time aggregately requested by respondents (*i.e.*, 25 minutes). This reply time is necessary because, *as the record clearly demonstrates*, respondents have a history of misrepresenting the facts and the law. In the alternative, this Court should grant the parties herein leave to submit supplemental briefs.

By his signature below, Appellant declares under penalty of perjury that he has read the contents of this letter and that all statements of fact contained therein are known by him to be true and correct, except as to those

matters stated on information and belief, and as to those matters, he believes them to be true.

Respectfully submitted,

Anthony G. Vasek
Plaintiff/Appellant in Pro Per

Attachments: Exhibit A and Proof of Service

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

ANTHONY VASEK, Plaintiff and Appellant, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants and Respondents.	E-33583 (Super.Ct.No. 254638) The County of Riverside (Filed Dec. 16, 2005)

THE COURT

Appellant's request to continue oral argument now set on calendar for January 4, 2006, at 9:00 a.m., is GRANTED. On the court's own motion, the case is taken off calendar until further order of this court.

The court DENIES appellant's requests to be informed of the panel prior to oral argument, and for additional time to present oral argument.

RAMIREZ
Presiding Justice

cc: See attached list

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ANTHONY G. VASEK, Plaintiff/Appellant, -vs- MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants/Respondents.	[FILED 2/16/05] Appeal No. **E033583**
ANTHONY G. VASEK, Plaintiff/Appellant, -vs- ROYCE LAPP, Defendant/Respondent.	Appeal No. E035087

Appeal from the Superior Court of Riverside County
Hon. Charles D. Field, Judge
Hon. Dallas S. Holmes, Judge
Case No. CIV254638

APPELLANT'S OPENING BRIEF

ANTHONY G. VASEK,
Plaintiff/Appellant *in Pro Per*
P.O. Box 1551
San Jacinto, CA 92581-1551
(949) 697-4268

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ISSUE #1: WAS IT CRITICALLY IMPORTANT THAT A SINGLE OPERATIVE COMPLAINT, WHICH INCLUDED THE MISSING DEFENDANTS, BE PUT IN PLACE BEFORE ANY MEANINGFUL PROCEEDINGS COULD BE HAD IN THE ACTION? Vasek says YES.

Vasek could not allege the true and complete facts of his case without the missing defendants 8

ISSUE #2: UNDER THE PREVAILING CIRCUMSTANCES, WAS VASEK REQUIRED TO FILE A MEMORANDUM OF COSTS ON APPEAL PRIOR TO THE RESOLUTION OF CERTAIN QUESTIONS PENDING BEFORE THE U.S. SUPREME COURT AND

THE CALIFORNIA COURT OF APPEAL? Vasek says NO.

Until this Court of Appeal resolved the question of the missing defendants, by and through its order of July 25, 2002, Vasek could not file a proper memorandum of costs which identified with specificity those against whom the trial court was empowered to enter a judgment as to costs on appeal 9

ISSUE #3: DID VASEK IMPROPERLY CONSOLIDATE COSTS ON APPEAL? Vasek says NO.

Vasek segregated his costs on appeal in a manner that permits a fair and reasonable assessment of costs against the non-prevailing parties.... 10

ISSUE #4: DID THE TRIAL COURT ABUSE ITS DISCRETION IN ITS HANDLING OF THE "DISENFRANCHISED" PARTIES? Vasek says YES.

After abusing Vasek for nearly 3 months, including imposing undeserved sanctions on him, the trial court had to be told by the Court of Appeal that the "disenfranchised" individuals may no longer be considered dismissed from the case, because the scope and effect of the reversal of the order dismissing them is clear on the record and as a matter of law 11

ISSUE #5: DID VASEK VIOLATE THE TRIAL COURT'S ORDER GRANTING HIM LEAVE TO FILE AN 8th AMENDED COMPLAINT? Vasek says NO.

Pursuant to the trial court's order, Vasek's 8th amended complaint alleges facts showing that Defendants Grosz and Hartley were part of a continuing section 1983 violation that took place through a series of related acts which eventually culminated in the malicious prosecution of an administrative proceeding against Vasek 14

ISSUE #6: DOES THE OPINION IN RELATED APPEAL NO. E017343 PRECLUDE VASEK FROM ALLEGING A CONTINUING VIOLATION THAT CULMINATED IN THE MALICIOUS PROSECUTION OF AN ADMINISTRATIVE PROCEEDING AGAINST HIM? Vasek says NO.

When the Court of Appeal ruled that Vasek could allege a cause of action under 42 U.S.C. 1983, and that he could establish a continuing violation by demonstrating a series of related acts taken against him, one or more of which falls within the limitations period, the Court of Appeal left the door wide open for Vasek to allege any and all wrongful conduct that occurred within the limitations period, including factual allegations of section 1983 violations that occurred after related Appeal No. E017343 was filed..... 15

ISSUE #7: ARE THE STATUTE OF LIMITATIONS ARGUMENTS PRESENTED BY DEFENDANTS LAPP, GROSZ AND HARTLEY SUSTAINABLE? Vasek says NO.

The statute of limitations arguments presented by Lapp, Grosz and Hartley mirror exactly those which this Court of Appeal had already rejected when they were presented for the Court's consideration by Attorney Defendants in related Appeal No. E017343..... 15

ISSUE #8: DOES CALIFORNIA GOVERNMENT CODE §821.6 OFFER A SHIELD AGAINST VASEK'S 42 U.S.C. 1983 CLAIM? Vasek says NO.

State statutory immunity provisions do not apply to federal civil rights actions..... 17

ISSUE #9: ARE THE QUALILFIED [sic] IMMUNITY ARGUMENTS PRESENTED BY DEFENDANT MASON SUSTAINABLE? Vasek says NO.

Defendant Mason is revisiting an issue that this Court's opinion in related Appeal No. E01734 had already resolved in Vasek's favor 17

ISSUE #10: DOES VASEK'S 8th AMENDED COMPLAINT ALLEGE A 42 U.S.C. 1983 CAUSE OF ACTION ADEQUATELY? Vasek says YES.

Defendants' assertions to the contrary notwithstanding, Vasek's 8th amended complaint pleads, in adequate fashion, the two elements

necessary to state a proper section 1983 claim 17

ISSUE #11: WAS MALICE ON THE PART OF DEFENDANT LAPP SUFFICIENTLY PLED? Vasek says YES.

Vasek has alleged an intentional tort on the part of Lapp 20

The contours of the rights violated by Lapp were sufficiently clear for Lapp to have understood that what he was doing in violating those rights was wrong 20

ISSUE #12: DID THE TRIAL COURT ERR IN GRANTING LAPP'S MOTION FOR SUMMARY JUDGMENT? Vasek says YES.

Defendant Lapp failed to meet his burden under CCP§437c 21

Lapp participated in a continuing violation as a co-conspirator, thereby making him liable not only for his own tortious conduct but also that of his co-conspirators within the scope of the conspiracy 22

The trial court failed to follow appellate rulings with regard to inferences that may be drawn from the nature of the acts done, the relation of the parties, the interest of the alleged conspirators, and other circumstances 22

ISSUE #13: SHOULD LAPP'S COSTS BE TAXED? Vasek says YES.

Lapp's memorandum of costs becomes moot if his dismissal is reversed; but even if arguendo said dismissal is affirmed, the costs claimed as to all other matters were not necessarily incurred 22

ISSUE #14: DID VASEK COMPLY WITH THE TORT CLAIM REQUIREMENT? Vasek says YES.

The conduct complained of was ongoing and continuing in nature 23

ISSUE #15: WAS VASEK DEPRIVED OF PROPERTY OR LIBERTY INTERESTS? Vasek says YES.

The case, upon which District Defendants rely to argue that Vasek was not deprived of property or liberty interests, is way off point 24

ISSUE #16: DOES THE STATE OF CALIFORNIA RECOGNIZE A CAUSE OF ACTION IN MALICIOUS PROSECUTION OF AN ADMINISTRATIVE PROCEEDING? Vasek says YES.

The cause of action in malicious prosecution of an administrative proceeding is discussed in Witkin's published works 25

ISSUE #17: ARE ATTORNEY DEFENDANTS PROPER DEFENDANTS IN VASEK'S MALICIOUS PROSECUTION ACTION? Vasek says YES.

It is a settled point of law in California that one who did not file the

complaint may nevertheless be liable for malicious prosecution if he or she was actively instrumental in putting the law in motion 25

ISSUE #18: DOES CIVIL CODE §1714.10 OFFER ATTORNEY DEFENDANTS A SHIELD AGAINST A MALICIOUS PROSECUTION SUIT? Vasek says NO.

It is a settled point of law in California that CC §1714.10 is not applicable to malicious prosecution actions 26

ISSUE #19: SHOULD THE TRIAL COURT ENTER DEFAULTS AGAINST HUSHBECK AND DEFENDANTS LIKE HIM? Vasek says YES.

Said Defendants failed to file timely responses to Vasek's 8th amended complaint and his memorandum of costs 26

ISSUE #20: SHOULD THE TRIAL COURT HAVE STRICKEN ALL OF DEFENDANTS' PAPERS AND VACATED ALL COURT ORDERS ASSOCIATED THEREWITH FOLLOWING THIS COURT'S ORDER OF 7/25/02? Vasek says YES.

The "missing" defendants were known and clearly identified 27

Not all District Defendants were represented by the Law Offices of Dennis J. Walsh on remand 28

The Law Offices of Dennis J. Walsh distorted what this Court said with regard to the representation of District Defendants 28

The service requirements were clear and self-evident 28

What Vasek was asking the trial court to do was clear and simple 29

It is within a trial court's inherent powers to rectify errors which it discovers it made in the course of executing its duties 29

Defendants could not show that the timeline in CCP §1008 had been violated 29

The question raised by Vasek's motion had not been litigated before 29

This Court's 7/25/02 ruling changed Defendants' status and impacted the legal analysis of Mason's and State Defendants' motions to compel 30

The confusion and uncertainty over the status of the "missing" District Defendants originated with Attorney Walsh, not Vasek 30

Vasek was demonstrably prejudiced by the ambiguous status of various District Defendants 31

The egregiousness of defendants' conduct justifies the taking of severe measures against them 31

ISSUE #21: DID THE TRIAL COURT OVERSTEP ITS BOUNDS AND ABUSE ITS DISCRETION IN ITS HANDLING OF THE HEARING HAD ON NOVEMBER 27, 2002? Vasek says YES.

The trial court imposed upon Vasek further undeserved sanctions which must now be lifted 32

ISSUE #22: HAVE DEFENDANTS AND THEIR ATTORNEYS ENGAGED IN AN ABUSE OF PROCESS? Vasek says YES.

The trial court and appellate records reveal that defendants/respondents herein, by and through their attorneys, systematically advanced arguments that were willfully misleading and subversive of the processes of the law to Vasek's great injury 33

ISSUE #23: SHOULD THIS COURT OVERRULE ITS PREVIOUS BESTOWAL OF STATE IMMUNITY ON DEFENDANT DISTRICT? Vasek says YES.

California has waived the tort immunity of its school districts and explicitly permits them to be sued in state court on a tort claim whose source is a congressional enactment 34

The Kirchmann case cannot be applied as a blanket rule 35

Vasek's case is vastly different from and entirely distinguishable from the Kirchmann case 35

The application of the Kirchmann decision to the instant case diminishes academic freedom in a significant way 37

To immunize Defendant District "as an arm of the state," within the context of an activity directly related to education, would break the seal that has insulated the American people, since the inception of our democracy, from governmental use of formal authority to engage in coercive, heavy-handed, state-sponsored indoctrination 38

SUMMARY AND CONCLUSION 38

CERTIFICATE 40

* * *

PERTINENT FACTS

At the onset of the first set of appeals, *all* District Defendants were represented by the Law Firm of Liebman, Reiner & Walsh. Subsequently, the Law Firm of Walsh & Declues was substituted in the place of Liebman, Reiner & Walsh, as to *all* District Defendants. In February of 2002, Dennis J. Walsh of the Law Offices of Dennis J. Walsh filed and served 8 substitutions of attorney which substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues. (1 E033583 CT 1-21; 1 E033583 SCT 1-3.) Since no substitutions of attorney were served and filed on behalf of the other District Defendants who had been represented by Walsh & Delcues, and since no leave to withdraw as counsel was served and filed by Walsh & Declues with regard to said

other District Defendants, Vasek served all subsequent papers on Messrs. Declues and Walsh, as separate counsel. Mr. Declues was served under the mantel of Walsh & Declues and later under the mantel of Declues & Burkett; and Mr. Walsh was served under the mantel of the Law Offices of Dennis J. Walsh. (See all of the proofs of service filed by Vasek subsequent to February 13, 2002.)

Initial Developments

At a status conference held on May 1, 2002, Vasek's first appearance before the Superior Court after remand of the within action, Vasek brought to Judge Field's attention the fact that counsel (*i.e.*, Mr. Declues or someone associated with him) for certain defendants had not appeared. Judge Field, however, placed no immediate importance on Vasek's observation. (E033583 RT 2, lines 9-16; E033583 RT 10, lines 14-19.)

Subsequent to attending the May 1 status conference, Vasek received from the Law Offices of Dennis J. Walsh a letter dated April 30, 2002, instructing Vasek to cease mailing documents to the Law Firm of Walsh & Declues because said law firm no longer existed. (1 E033583 CT 218.) Soon after receiving the April 30 letter from the Law Offices of Dennis J. Walsh, Vasek received from the Superior Court a Notice of Status Conference dated May 1, 2002, which contained the following line printed in caps: "NOTE: ALL OTHER PARTIES HAVE BEEN NOTIFIED." (1 E033583 CT 219.) Vasek thereupon called the clerk's office to ascertain the address(es) used by the Superior Court to notify the parties who had not substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues. Vasek was informed by the clerk of the

Superior Court that the parties who had not substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues were listed as having been dismissed and that said defendants, therefore, had not been noticed.

Vasek traveled to the Court of Appeal on May 10, 2002, to review the appellate record in order to ascertain what had gone wrong. Vasek discovered a letter filed on April 27, 2000, which *without leave of court* shortened the list of defendants/respondents represented by Walsh & Declues. (1 E033583 CT 221.) Said letter – sent by Walsh & Declues to the attention of a clerk of this Court – bears no indication that Vasek was ever copied. Vasek states unequivocally that, until he discovered the letter in the appellate court's file on May 10, 2002, he was totally unaware of the letter's existence.

Vasek sent to Mr. Dennis J. Walsh a letter dated May 25, 2002, asking Mr. Walsh to advise Vasek as to what Vasek should do about serving those defendants/ respondents who had been represented by Mr. Walsh under the mantel of Walsh & Declues but who *had not* substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues. (1 E033583 CT 222-228.) On June 5, 2002, the Law Offices of Dennis J. Walsh informed Vasek by telephone that said law offices deemed said defendants to be dismissed from the case. Said Law Offices later affirmed their position, stating that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action." (2 E033583 CT 320, line 27 to 2 E033583 CT 321, line 1.)

On May 31, 2002, as part of his Objection & Opposition to State Defendants' Motion for Judgment on the Pleadings, Vasek filed a MOTION FOR CONTINUANCE

& REQUEST FOR SANCTIONS, which recited the facts herein presented. Said motion sought a stay of all trial court proceedings pending resolution of the question of the "disenfranchised" parties – *i.e.*, those who had been dropped from the list of parties to the appeal through an error induced by Mr. Walsh's letter filed on April 27, 2000. (1 E033583 CT 123-165.) Beginning with his motion for continuance filed on May 31, 2002, and in every pleading and hearing thereafter until this Court intervened to correct the matter, Vasek consistently maintained that he was entitled, *as of right*, to have the "disenfranchised" parties appear in the trial court as proper defendants to answer Vasek's complaint on remand. (See the opening paragraphs in all of Vasek's oppositions filed prior to this Court's order filed on July 25, 2002.)

Ignoring Vasek's demands as of right, opposing counsel filed pleadings and issued notices for discovery without ever serving said pleadings and notices on the "disenfranchised" parties. Vasek opposed said pleadings and notices on the grounds that Judge Field's refusal to restore the "disenfranchised" parties to the within remanded action on Vasek's ***demand*** *as of right* operated as a denial of Vasek's right to proceed against said "disenfranchised" parties on remand. In particular, Vasek refused to honor Defendant Mason's deposition notice on the grounds that said notice had not been served upon the "disenfranchised" parties, and that failure to do so compromised Vasek's ability to preserve his right to limit his exposure to depositions as provided by CCP §2025(t). (1 E033583 CT 259-273.) At the 7/8/02 hearing of Defendant Mason's motion to compel Vasek's compliance with a deposition notice, Judge Field pronounced Vasek's arguments (regarding the need to restore the "disenfranchised" parties) "silly," imposed a

sanction of $750 on Vasek for "taking up the Court's time with such arguments," and compelled him to comply with a defective notice to which he had properly objected. (E033583 RT 39-40.)

Appellate Court Intervention

On July 19, 2002, Vasek filed in this Court a supplemental letter memorandum of points and authorities to his pending motion to recall the appellate court's remittitur. Said letter informed this Court of Judge Field's belief that it was within his purview to decide whether to uphold the "disenfranchised" parties' exclusion from the within remanded case. (E033583 RT 42-43.) In an order filed on July 25, 2002, this Court held that the individual defendants listed in the 9/5/95 dismissal order were bound by this Court's reversal of said order, that that entitled Vasek to proceed against them in the Superior Court, and that said individuals "may no longer be considered dismissed from the case, because the scope and effect of the reversal of the order dismissing them is clear on the record and as a matter of law."

Filing of Memorandum of Costs on Appeal

On August 2, 2002, upon receiving this Court's 7/25/02 order, Vasek served and filed his memorandum of costs on appeal as to all defendants, including those previously deemed by the trial court to have been dismissed. (2 E033583 CT 511-514.) All defendants, except Defendant Lapp, brought motions to tax costs on appeal or filed joinders to said motions to tax. (2 E033583 CT 520-536, 549-550; 3 E033583 SCT 882-898; 2 E033583 CT 551-553; 4 E033583 CT 1062-1063, 1080-1101; 7 E033583 CT

1812-1816.) Vasek filed oppositions thereto, and District Defendants replied. (7 E033583 CT 1829-1861, 1960-1967.) The trial court granted said motions to tax. (7 E033583 CT 2041-2044; 8 E033583 CT 2122-2131.)

* * *

ISSUE #20

* * *

J. The confusion and uncertainty over the status of the "missing" District Defendants originated with Attorney Walsh, not Vasek.

The opposition filed by the Law Offices of Dennis J. Walsh states: "Plaintiff has created his own issue of 'disenfranchised defendants.'" (6 E033583 CT 1601, line 4.) Whom are they trying to kid?

Dennis J. Walsh created this whole mess by sending to a clerk of this Court a letter which *without leave of court* shortened the list of defendants/respondents represented by Walsh & Declues in the appeal. (7 E033583 CT 1937.) On remand, the Law Offices of Dennis J. Walsh then filed substitutions of attorney for only some of the defendants listed in said letter, and then insisted that the remaining District defendants were no longer proper parties defendant in the within remanded action. (2 E033583 CT 320, line 27 to 2 E033583 CT 321, line 1.)

* * *

ISSUE #23

* * *

A. California has waived the tort immunity of its school districts and explicitly permits them to be sued in state court on a tort claim whose source is a congressional enactment.

The California Tort Claims Act (Gov Code §810 *et sequitur*) recognizes a limited waiver of sovereign immunity as to California public entities. The Act permits *statutorily recognized* tort actions to be brought *in California courts* against California governmental entity tortfeasors. (*Thompson v. City of Lake Elsinore* (1993), 18 Cal App 4th 49 at 61-62.) Indeed, Gov Code §815 states that a public entity is not liable for an injury *except as provided by statute*; and Gov Code §811.8 defines *statute* to be an act adopted by the Legislature of this State *or by the Congress of the United States*. It is therefore beyond dispute that 42 U.S.C. 1983 is a "statute" within the meaning of the California Tort Claims Act.

It is also beyond dispute that, though many tort cases have been brought against California school districts under the Act, *none* – before *Kirchmann* – had established blanket immunity from tort liability for California school districts. (See, for example, *Brown v. Poway Unified School District* (1993), 4 Cal 4th 820, *Christopher P. v. Mojave Unified School District* (1993), 19 Cal App 4th 165, and *Constantinescu v. Conejo Valley Unified School District* (1993), 16 Cal App 4th 1466.) Moreover, neither the *Kirchmann* court nor the *Vasek* court (in related Appeal No. E017343) cited any authority holding that California school districts are an arm of the state for tort purposes.

The *Kirchmann* court attempted to get around the waiver granted under Gov Code §815 by arguing that, "if an entity is not subject to suit under section 1983 in federal court because of the Eleventh Amendment, Congress presumably did not intend that it be subject to suit under section 1983 in state court either." That statement, however, contradicts the very argument upon which it is based. Under the doctrine of States' rights, whether a section 1983 claim can be brought in state court against a state entity is wholly within the purview of the state itself, not Congress. Indeed, the U. S. Supreme Court has repeatedly held that states are at liberty to subject their lesser governmental entities to federal claims free from any Eleventh Amendment impact *if they choose to have their own courts hear those claims.* (*Pennhurst State School & Hospital v. Halderman* (1984), 465 U.S. 89, 99; *Alden v. Maine* (1999), 527 U.S. 706, 743; *Welch v. Texas Department of Highways and Public Transportation* (1987), 483 U.S. 468, 473 and 474; *Hess v. Port Authority Trans-Hudson Corporation* (1994), 513 U.S. 30, 39.)

Based on all of the foregoing, therefore, this Court should find that California Gov Code §815 permits Vasek to bring a 42 U.S.C. 1983 claim in state court because 42 U.S.C. 1983 is a "statute" as defined by Gov Code §811.8.

B. The Kirchmann case cannot be applied as a blanket rule.

In *Doe v. Lawrence Livermore National Laboratory* (9th Cir. 1995), 65 F.3d 771 at 776, the 9th Circuit Court found that a grant of immunity in one case does not necessarily translate into a grant of immunity in another case just because the entity involved is similar or even

identical. Rather, a separate analysis must be performed in each case to determine whether a grant of immunity is appropriate. Indeed, the *Kirchmann* court itself acknowledged the need to examine the relationship between the State and the public entity. (*Kirchmann supra* at 1106, quoting *Lynch v. San Francisco Housing Authority* (1997), 55 Cal App 4th 527, and *Regents of the University of California v. Doe* (1997), 519 U.S. 425.) Thus, even if *arguendo* the *Kirchmann* case were to be deemed properly decided under the circumstances presented there, do the circumstances in Vasek's case place it within a class of cases that differs from that within which *Kirchmann* falls?

C. Vasek's case is vastly different from and entirely distinguishable from the Kirchmann case.

To the best of Vasek's knowledge, his case is the first appellate case in California history to allege a 42 U.S.C. 1983 cause of action based upon administrative interference with *a faculty member's academic freedom*. The *Kirchmann* case and its predecessors are vastly different and entirely distinguishable in that they do not involve questions related to academic freedom, but rather with issues that are, at best, *tangential* to the fundamental purposes and workings of an educational institution.

In the *Kirchmann* case, Norma Kirchmann was a *secretary* who was suspended for 30 days after she anonymously communicated to bidders her view that a *conflict of interest* existed *in the bidder selection process*. In the *Mitchell* case (*i.e.*, *Mitchell v. Los Angeles Community College District* (1988), 861 F.2d 198), Richard Mitchell was an *applicant* who filed a complaint alleging *discrimination* on the basis of race, sex and age *in the district's*

hiring process. In the *Belanger* case (*i.e., Belanger v. Madera Unified School District* (1992), 963 F.2d 248), Jean Belanger was an elementary school principal who was reassigned to a classroom teaching position *allegedly because of her gender* and in retaliation for testifying against the school district in a separate *discrimination* action.[1] None of these cases involved the shaping of impressions in students' minds through academic discourse. The exact opposite is true in the instant case.

After a 7-day trial on more than 40 trumped-up charges for Vasek's dismissal, during which 18 witnesses appeared and nearly 300 documents were entered into evidence, Judge Hewitt of the California Office of Administrative Hearings issued a scathing 9-page, single-spaced decision in favor of Vasek which noted that the course descriptions in the college catalogue misled students "to their ultimate educational detriment," that Vasek's motives "were praiseworthy and any disciplinary action against him would have an adverse impact or chilling effect upon his free exercise of constitutional rights *as well as those of other certified persons.*" (2 E033583 CT 363, last sentence of 4th last ¶; emphasis is added.)

Thus, the question impacts not only Vasek's field but *all* fields of academic and professional endeavor. Indeed, there is no limit to where this can be taken. Defendant District, by and through certain defendants herein, had

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[1] This Court should also note that Richard Mitchell and Jean Belanger brought 42 U.S.C. 1983 causes of action in *federal* court rather than *state* court. By doing so, said individuals denied themselves the waiver accorded by California Gov Code §815 to cases brought in *state* court and fell victim in *federal* court to demurrers based upon Eleventh Amendment immunity.

coercively and heavy-handedly insisted, under threat of dismissal, that Vasek, through normal academic discourse, participate in the shaping of false impressions on the minds of students regarding what constitutes "engineering." So, what's to prevent any institution of higher education from similarly coercing its faculty members into promulgating false teachings regarding genetic differences, religious differences, racial differences, etc.? The answer, of course, lies in an *unremitting* defense of academic freedom.

D. The application of the Kirchmann decision to the instant case diminishes academic freedom in a significant way.

Everyone understands that Defendant District is an abstract entity and as such cannot do anything except through the *persons* of its officials. Thus, all retaliations taken against Vasek originated with, and were shepherded by, the *persons* of said officials. Everyone also understands that, even under the best of circumstances, the administration, vested as it is with official power and the resources of the State, has the clear advantage. This consideration becomes all the more important when one considers the additional advantages that errant officials can (and do) bestow upon themselves by and through their inherent formal powers. Indeed, when this Court granted state immunity in related Appeal No. E017343, District Defendants saw to it that they continued to be represented by counsel provided by (and paid for) by Defendant District, notwithstanding this Court's declaration that Vasek may pursue his section 1983 action against them only in their personal capacities.

Conflicts such as those between Vasek and the District, therefore, pit David against Goliath, academic freedom notwithstanding. And immunizing the District has weighed the scales so heavily in favor of those acting on behalf of the District and against the faculty as to render it virtually impossible for any faculty member to exercise his or her academic freedom without suffering substantial harm in the process.

The practical effect of applying *Kirchmann* to the instant case, therefore, is to significantly diminish academic freedom; and since academic freedom is the lifeblood of education, any hemorrhaging left unchecked leaves the door wide open for those who would promulgate the antithesis of education – *i.e.*, indoctrination.

E. To immunize Defendant District "as an arm of the state," within the context of an activity directly related to education, would break the seal that has insulated the American people, since the inception of our democracy, from governmental use of formal authority to engage in coercive, heavy-handed, state-sponsored indoctrination.

While state involvement in the *funding and operation* of public education may be necessary and even desirable, no one disputes the fact that, under our system of government, a state agency is constitutionally barred from marshalling its resources and powers to impose "state approved" ideas upon unsuspecting individuals – particularly when those individuals are highly impressionable students. Indeed, history has shown that, whenever a state was given powers to shape thought (*e.g.*, through a national religion, a national press, or a nationally imposed

ideological school of thought), it has invariably led to indoctrination and repression rather than education.

Mindful of this lesson and of what transpires in totalitarian states, we as a nation have *never* permitted our government to control the mind of the populace through state control of news media. Given that no news medium exerts more influence on an individual's mind than a school, it follows that, within the context of our system of government and our entire national history, *there never has been and there never can be* a school district that is an "arm of the state" *for educational purposes*. (In cases involving *non-educational* matters, the application of *Kirchmann* might still be valid.) Indeed, to immunize a school district "as an arm of the state," within the context of an activity *directly related to education*, would break the seal that has insulated the American people, since the inception of our democracy, from governmental use of formal authority to engage in coercive, heavy-handed, state-sponsored indoctrination.

Since the retaliatory measures taken against Vasek were in response to matters *directly related to education*, this Court of Appeal should overrule its previous bestowal of state immunity on Defendant District and its officials acting in their official capacities.

* * *

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ANTHONY G. VASEK, Plaintiff/Appellant, -vs- MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants/Respondents.	[FILED 8/22/05] Appeal No. **E033583** Appeal No. E035087
ANTHONY G. VASEK, Plaintiff/Appellant, -vs- ROYCE LAPP, Defendant/Respondent.	

Appeal from the Superior Court of Riverside County
Hon. Charles D. Field, Judge
Hon. Dallas S. Holmes, Judge
Case No. CIV254638

APPELLANT'S REPLY BRIEF

ANTHONY G. VASEK,
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CREDIBILITY OF LEGAL REPRESENTATION CLAIMS

On remand, the Law Offices of Dennis J. Walsh filed substitutions of attorney for some, but not all, of the District defendants in the action. Later, Vasek discovered that the defendants not appearing on Dennis Walsh's client list were deemed by the trial court to have been dismissed on appeal. Vasek, therefore, sought to have these "missing" parties recognized as proper parties defendant in the within remanded action, but the Law

Offices of Dennis J. Walsh opposed Vasek's efforts at every turn.

So on June 21, 2002, Vasek filed in this Court a motion to recall the appellate court's remittitur for the purpose of making clear that these "disenfranchised" parties were indeed intended by this Court to continue as parties defendant in the within remanded action. Vasek then filed in the trial court a motion for a continuance of the trial court proceedings pending the outcome of Vasek's appellate motion. However, the Law Offices of Dennis J. Walsh opposed said motion for a continuance, stating "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action." (2 E033583 CT 320, line 28 to 2 E033583 CT 321, line 1.) An examination of the client list on p. 1 of said opposition reveals that as late as July 8, 2002 – *i.e.*, the day the Law Offices of Dennis J. Walsh served said opposition – said law firm refused to recognize the "disenfranchised" individuals as clients of said law firm. (2 E033583 CT 320.) But, the Law Offices of Dennis J. Walsh now claim "Dennis J. Walsh had been representing the District Defendants *since the outset* of this litigation and continued to represent them." (District Respondents' RB, p. 7; emphasis is added.)

* * *

APPROPRIATENESS OF MOTION TO STRIKE DEFENDANTS' PAPERS

* * *

Curiously, Grosz and Hartley essentially admit that Vasek's rights were violated, but portray it as no big deal. They state: "Even were certain other defendants to have been erroneously dismissed from his lawsuit, that *only* precluded Vasek from naming them as defendants." (State

Respondents' RB, p. 14.) Only, indeed. Vasek had consistently maintained that he was entitled, *as of right*, to have the "disenfranchised" parties appear in the trial court as proper defendants to answer Vasek's complaint on remand. (See the opening paragraph in all of Vasek's oppositions filed in the trial court prior to this Court's order of July 25, 2002.) Judge Field's refusal to restore the "disenfranchised" parties to the within remanded action on Vasek's ***demand*** *as of right* operated as a denial of Vasek's right to proceed against said "disenfranchised" parties on remand. In an order filed on July 25, 2002, this Court held that "these individual defendants were bound by this court's reversal, which *entitled* plaintiff to proceed against them in the superior court." (4 E033583 SCT 944-945; emphasis is added.)

* * *

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ANTHONY G. VASEK, Plaintiff and Appellant, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants and Respondents.	E017343 and E020125 (Super.Ct.No. 254638) The County of Riverside
ANTHONY G. VASEK, Plaintiff and Appellant, v. ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES et al., Defendants and Respondents.	E019009 (Super.Ct.No. 254638) The County of Riverside (Filed Feb. 8, 2002)

THE COURT

Appellant's motion to recall the remittitur received January 28, 2002 is DENIED. Appellant provides no cognizable reasons for recall of the remittitur. The appellate court has discretion to recall a remittitur only if there has been fraud or imposition upon the court, or if the court has dismissed the case and issued a remittitur because of its mistake or inadvertence. (E.g., *Pacific Legal Foundation v. California Coastal Comm.* (1982) 33 Cal.3d 158, 165.) This court properly issued the remittitur under California Rules of Court, rule 25(a), second paragraph. Appellant does not explain why recall of the remittitur is

necessary before he can petition the United States Supreme Court for a writ of certiorari.

RAMIREZ
Presiding Justice

cc: See attached list

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ANTHONY G. VASEK, Plaintiff and Appellant, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants and Respondents.	E017343 and E020125 (Super.Ct.No. 254638) The County of Riverside
ANTHONY G. VASEK, Plaintiff and Appellant, v. ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES et al., Defendants and Respondents.	E019009 (Super.Ct.No. 254638) The County of Riverside (Filed May 1, 2002)

THE COURT

The court DENIES appellant's renewed motion filed April 23, 2002, to recall remittitur. Although appellant correctly points out that this court mislabeled the subsections in section six of the opinion, such insignificant typographical error does not provide sufficient grounds for recalling the remittitur as appellant contends. (See *Pacific Legal Foundation v. California Coastal Comm.* (1982) 33 Cal.3d 158, 165; *Bryan v. Bank of America* (2001) 86 Cal.App.4th 185, 190-191.) The opinion is complete as filed. The court rejects appellant's remaining contentions for the same reasons stated in this court's order filed on

February 8, 2002. This court no longer retains jurisdiction to grant the request for stay of trial court proceedings.

McKINSTER
Acting Presiding Justice

cc: See attached list

No. 06-360

IN THE

Supreme Court of the United States

ANTHONY G. VASSEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION TWO

BRIEF IN OPPOSITION FOR RESPONDENT KEENAN & ASSOCIATES

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QUESTION PRESENTED

Whether petitioner has presented compelling reasons to grant this petition where there has been no appropriate showing of any violation of equal protection rights, and the Fourth Appellate District Court of Appeals' decision does not conflict with a decision of this Court or the Court of Appeals and petitioner has failed to demonstrate any federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent KEENAN & ASSOCIATES is a California Corporation, with no parent corporation and no publicly held corporation owning ten percent or more of the corporation's stock.

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INTRODUCTION

Petitioner has presented no "compelling reason" for his Petition for Certiorari to be granted ("Petition"), *See* Supreme Court Rule 10. Specifically, Petitioner has failed to demonstrate that the opinion by the Fourth Appellate District Court of Appeal for the State of California is in conflict with any decision of this Court or the Court of Appeal or that it involves any important federal question that has not be settled by this Court. *See* Supreme Court Rule 10(a)(c)). Petitioner contends that his Fourteenth Amendment Right to Equal Protection under the law has been violated, but the facts and the records do not support any such contention. Petitioner has clearly been provided by the courts with every opportunity to pursue his claim and has made his specific choices to ignore the proper procedures, court orders, and to attempt to force the court system to operate according to his desires, as opposed to operating consistently with the statutes and rules of law. Petitioner was required to comply with rules and orders that would be applicable to any party appearing in the courts of the State of California. Having chosen to bring his case in the courts of the State of California, he must abide by their rules of procedure and obey the lawful orders of the Court.

In its opinion in the first appeal, E017343 and E020125, consolidated with E019009, issued October 4, 2001, the Fourth District Court of Appeal bent over backwards to give Petitioner the opportunity to pursue his violation of 42 U.S.C. § 1983, indicating that Petitioner may be able to state a cause of action under that section alleging conspiracy between the various parties. The court therefore reversed the trial court's judgment of dismissal based upon orders sustaining demurrers without leave to amend, granting summary

judgment and granting a motion to strike. *See* Petitioner's Appendix page 49. Therefore, pursuant to California *Code of Civil Procedure* Section 472(b), Petitioner could file an amended complaint as a matter of right within thirty days after mailing of the notice of remittitur. However, Petitioner did not do so.

Thereafter, Petitioner was repeatedly told by other counsel in their briefs and opposition papers, as well as by the court, that he needed to file a motion to obtain leave to amend his complaint if he wanted to change allegations, or otherwise amend his complaint as to any party. In response to his request at the hearing on a motion for judgment on the pleadings by Grosz & Hartley, he was granted leave to amend only as to those two defendants. (CT 198-A, 294-294, RT 26-38.) He was advised that he needed to file a motion for leave to amend if he wanted to amend the complaint in any other fashion. (RT 34-38) Nevertheless, Petitioner filed his Eighth Amended Complaint alleging new allegations, a new cause of action and amending his allegations against other defendants. (CT 367-407.)

Similarly, Petitioner failed to file his Memorandum of Costs on Appeal within the forty days allowed by California Rule of Court 26(d).

Petitioner would like to control the proceedings of the case according to his own schedule as opposed to complying with the requirements of the court and the state laws and court rules. He cites no authority to support his contention that the trial court proceedings must be stayed while he sought a Petition for Writ of Certiorari to the United States Supreme Court. Similarly, he cites no authority for his contention that all of the proceedings and discovery should be stayed while

he sought a recall of the remittitur. As demonstrated by the Appellate Court's denial of his two requests that the remittitur be recalled, he had no sufficient basis for any such requests. Similarly, his Petition for Writ of Certiorari to the Supreme Court was denied.

Petitioner cites no authority to support his contention that all proceedings and discovery should be stopped because he had some confusion in his mind as to who the parties were to the litigation. He misconstrues and misrepresents the court's order filed July 25, 2002 as an order "reinstating missing defendants" when in actuality, the order was a denial of his request for a recall of the remittitur based upon the fact that it was clear on the record and as a matter of law that there were no missing or "disenfranchised" defendants. As the order pointed out, all of the district defendants had been represented by Dennis Walsh throughout the appellate and post-appellate process. *See* Appendix to Petition, page 120. Again, Petitioner's remedy would have been to file a motion for leave to amend, explaining the situation to the trial court, in order to obtain leave to amend to properly name and identify all of the parties in a new amended complaint. Petitioner did not do so.

Petitioner further contends that he could not file his Memorandum of Costs because of his confusion about the purportedly missing or disenfranchised defendants, which never were missing and never were disenfranchised. However, he cites no authority to support such contentions. There is nothing to have prevented him from filing his Memorandum of Costs on Appeal as to District Defendants or any other defendants.

In summary, Petitioner has failed to demonstrate any basis in law or fact for his Petition for Writ of Certiorari. He has failed to demonstrate any compelling reasons for this Court to grant the Petition and has not demonstrated that rights to equal protection have been violated. Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

Petitioner alleged a conspiracy to violate his civil rights by a large number of people and entities stretching back to the early 1990's. He originally filed his complaint in 1994, and filed his first appeal in 1997 after the trial court sustained demurrers and granted motions for summary judgment and motions to strike.

The Court of Appeal reversed those orders indicating that Appellant might be able to state a cause of action for conspiracy to violate his civil rights. However, Appellant failed to amend his complaint after remittitur, failed to seek leave to amend after the time to amend had lapsed, and following an order granting him limited leave to amend he again failed to seek leave to amend his entire complaint. Instead, he violated the order of the Court and amended, without right, his entire complaint.

After the Trial Court again granted demurrers, motions to strike, and a motion for summary judgment, Vasek elected not to amend, and not to seek leave to amend, and chose to appeal the orders of dismissal and judgment that resulted from his choice.

The Court of Appeal correctly affirmed the dismissals and judgment, as well as the orders taxing Appellant's Costs

on the prior appeal, and the granting of sanctions against Appellant/Petitioner.

The Court of Appeal issued its tentative opinion and indicated that oral argument would not be scheduled unless the parties requested oral argument. Petitioner indicated that he wanted to argue the case while most of the defendants filed waiver of oral argument. KEENAN & ASSOCIATES filed a paper indicating that it wanted time for argument if, and only if, Petitioner argued the matter. After the Court of Appeal scheduled the oral argument, Petitioner requested a continuance as well as requesting additional time for argument. While the continuance was granted, the request for additional time was denied. *See* Petitioner's Appendix, page 38. Thereafter, Petitioner filed a notice that he was waiving oral argument in the matter on March 3, 2006, and the Court Issued its Final Opinion on March 10, 2006. *See* Petitioner's Appendix page 1.

REASONS FOR DENYING THE PETITION

Petitioner failed to demonstrate any violation of the equal protection clause nor any failure to follow any existing opinion in the Supreme Court. Petitioner's reliance on *Felder v. Casey* (1988) 487 U.S. 131 at 147 is misplaced. That case involved the state requirement of filing a notice of claim as a prerequisite to the filing of a 1983 action, which meant that requirement would determine the outcome if filed in state court, but not federal court. Since it created a state condition on the right to sue, it was more than a mere rule of procedure. *Felder, supra*, at page 151. In contrast, where the state rules do not "impose unnecessary burdens upon the rights of recovery authorized by federal laws," then the litigants must

comply with the state rules and the federal court will not intervene. *Felder*, *supra*, page 150.

The California courts have given Petitioner every opportunity to present his claim, but at every step of the way, Petitioner has delayed, violated procedural rules and requirements and chosen not to follow the rules and regulations of the State of California. The rules and regulations of the courts of the State of California apply equally to all parties and are important in keeping order and controlling litigation. While Petitioner may have liked to have stayed all other proceedings while he petitions the U.S. Supreme Court for a Writ of Certiorari, he can cite no authority for such a proposition. There was nothing to preclude him from proceeding with his petition to the United States Supreme Court while proceeding with the actions in the trial court. Petitioner does not appreciate the fact that the defendants have a right to have the matter decided and disposed of in a timely manner. Petitioner does not recognize that defendants have a right to proceed with discovery in a timely manner in an effort to determine whether there is any actual basis for Petitioner's claims. There is no evidence that anyone interfered with his right to petition the United States Supreme Court for a Writ of Certiorari, nor violated his right to do so.

Petitioner's claim that a portion of the Appellate Opinion is missing is without merit. It is apparent that there was no portion of the Appellate Opinion missing, but that there had been a typographical error in identifying subsections. (*See* Petitioner's Appendix, page 169-170.)

Similarly, Petitioner cites no authority for the proposition that his equal protection rights were violated by the

requirement that he file his amended complaint by February 2, 2002. There is nothing to have prevented him from filing an amended complaint, which could later have been amended again, if necessary, by leave of court. This requirement is applied equally to all parties in California. Furthermore, it has nothing to do with placing a condition on the vindication of a federal right violative of the holding in *Felder*, *supra.*

Petitioner again attempted to stall all proceedings in this case, along with refusing to participate in lawful discovery by his insistence that nothing could proceed because he was confused about certain of the District Defendants' participation in this case. However, as the Court of Appeal indicated in its order denying his request for recall of the remittitur, the status of those defendants was clear as a matter of law and was clear on the record. (*See* Petitioner's Appendix, page 120.) All Petitioner had to do was file a motion for leave to amend, with an explanation as to why he needed to amend the complaint to identify all pertinent parties in order to amend his allegations to make one complaint applicable to all parties. However, Petitioner failed and refused to do so.

Petitioner was repeatedly told in papers filed by the other parties, as well as being specifically told by the court that he needed to file a motion for leave to amend if he wanted to amend his complaint as to anyone other than Gross and Hartley. However, Petitioner failed and refused to ever file any motion for leave to amend. Instead, Petitioner deliberately and intentionally, amended his complaint in a manner that changed the allegations against the various defendants without having received leave of court to do so. In doing so, he violated the order of the court which was clear and explicit on its face. Therefore, sanctions were

granted pursuant to California *Code of Civil Procedure* Section 128.5 since Petitioner's actions were frivolous. *See* Appendix page 123. Nevertheless, the court again advised Petitioner that he could amend his complaint. However, the leave that had previously been granted to him was limited to an amendment as to defendants Grosz and Hartley. If Petitioner wanted to amend as to the other defendants, it would be necessary for Petitioner to file a motion for leave to amend. Petitioner chose not to do so. Instead he filed a document indicating his intent to rely upon the eighth amended complaint and his waiver of any right to amend. (CT 2013-2015.) Therefore, Petitioner must be bound by his choices. Thus, the Court of Appeal appropriately determined that he had defeated his own claims through procedural error and had finally reached the end of the road. *See* Petitioner's Appendix, pages 3-4.

Similarly, Petitioner's arguments regarding his failure to file his Memorandum of Costs on Appeal is unsupported by any authority. His argument that he could not allocate costs among defendants is not based on fact or law. Petitioner could easily have filed his Memorandum of Costs on Appeal against all defendants or against all District Defendants, and his unwarranted delay is inexcusable.

In summary, Petitioner does not demonstrate any basis for his request that the Supreme Court review the matter in order to "maintain and underscore the inalienability of rights granted by the United States Constitution to every individual encompassed by it" nor to "ensure conformation to the teachings of the U.S. Supreme Court" nor to "preserve the fundamental notions of ordered government."

CONCLUSION

The Appellate Court was proper in upholding the court's dismissal of the claims against Keenan & Associates based upon Petitioner's waiver of amendment, failure to seek leave to amend, and amendment of the Eighth Amended Complaint without leave of court as to Keenan & Associates. Petitioner's refusal to cure the defects in the Eighth Amended Complaint warranted dismissal under *Solis v. Williams* (1999) 74 Cal.App.4th 577, 585. Similarly, the Appellate Court's affirmance of the Court's Order Taxing or Striking Petitioner's Costs on Appeal was appropriate.

Therefore, Petitioner has not established any compelling reason for this Court to grant his Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
NOV 13 2006

(7)

No. 06-360

IN THE

Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT,
DIVISION TWO

BRIEF IN OPPOSITION FOR RESPONDENT ROY B. MASON

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QUESTIONS PRESENTED FOR REVIEW

I. Whether Petitioner has presented compelling reasons to grant the Petition, where the California Court of Appeal's Unpublished Opinion affirming the trial court's dismissal of Petitioner's case following Petitioner's express "Waiver of Leave to Amend (and Plaintiff's Continued Reliance Upon, And Affirmation Of, His Eighth Amended Complaint)" does not implicate any federal question that has not been settled by this Court.

II. Whether Petitioner has presented compelling reasons to grant the Petition, where the California Court of Appeal's Unpublished Opinion affirming the trial court's dismissal of Petitioner's case following Petitioner's express "Waiver of Leave to Amend (and Plaintiff's Continued Reliance Upon, And Affirmation Of, His Eighth Amended Complaint)" does not conflict with relevant decisions of this Court and does not implicate an important federal question that has not been settled by this Court.

III. Whether Petitioner has presented compelling reasons to grant the Petition, where the asserted error in the California Court of Appeal's Unpublished Opinion affirming the trial court's dismissal of Petitioner's case largely consists of allegedly erroneous factual findings and/or the misapplication of a properly stated rule of law.

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INTRODUCTION

Petitioner has presented no compelling reasons for granting his Petition for a Writ of *Certiorari* ("Petition"). Petitioner fails to demonstrate that the California Court of Appeal's March 10, 2006 Opinion (hereinafter the "appellate opinion") is in conflict with a decision of this Court or decided an important federal question that has not been settled by this Court. (See Sup. Ct. R. 10(a)-(c).) Petitioner makes unconvincing arguments as to a conflict between the subject Unpublished California Court of Appeal Opinion and the Ninth Circuit decision in *Doe v. Lawrence Livermore National Laboratory* (9th Cir. 1995), 65 F.3d 771, while completely ignoring the fact that his case was dismissed because he *expressly* waived his right to file a ninth amended complaint after his eighth amended complaint exceeded the scope of amendment previously permitted by the court. Thus, the Petition should be denied.

Petitioner also contends that the California Court of Appeal misapplied the state immunity clause of the Eleventh Amendment to the U.S. Constitution. (See Petition, p. 17, II.) Such claim is not the proper subject of Supreme Court review (See Sup. Ct. R. 10), and has no application to Respondent Mason because Mason challenged Petitioner's eighth amended complaint on the grounds that it exceeded the scope of amendment permitted by the trial court and Petitioner, though invited to do so by the court, did not seek leave of court to file an amended complaint asserting new claims or causes of action against Respondent Mason (and others). Procedural errors by Petitioner, which he expressly waived the opportunity to correct, led to the dismissal of his case.

STATEMENT OF THE CASE

This case has a long history. Petitioner filed his original complaint over 12 years ago, on August 26, 1994. Petitioner was employed as a faculty member of the San Jacinto Community College. He claimed he was the victim of a conspiracy designed to retaliate against him for criticizing the school's vocational drafting program and speaking out about his alleged mistreatment. (Respondent's Appendix (hereinafter "Res.App.") 5a.)

Over the past twelve years, Petitioner has represented himself before the trial court, the California court of appeal, the California Supreme Court and this Court.[1] A previous appeal resulted in a decision filed on October 4, 2001, with a remittitur issuing on January 23, 2002. (Res.App. 6a.) When Petitioner did not file an amended complaint within the statutorily permitted time, on June 20, 2002, Respondent Mason filed a demurrer to the third amended complaint, the most recent version of the complaint naming Mason. The hearing on the demurrer was set for hearing on July 25, 2002. However, the demurrer was rendered moot on that date as Petitioner had filed an eighth amended complaint on July 17, 2002.

1. Petitioner is Granted Limited Leave to Amend.

The facts and circumstances surrounding the filing of Petitioner's eighth amended complaint were important to the appeal. Petitioner's eighth amended complaint was filed in response to the court's granting of a motion for judgment on the pleadings filed by Respondents Grosz and Hartley.

1. Petitioner's previous Petition for Writ of Certiorari was denied on June 3, 2002.

(Res.App. 6a.) The court's instructions to Petitioner at the June 17, 2002 hearing on Grosz and Hartley's motion for judgment on the pleadings, and the order entered following the hearing, were not fully discussed in the Petition. Thus, the details of the *limited leave to amend* granted by the court are highlighted here for the Court's ease of reference.

When questioned by the court, Petitioner indicated he was seeking leave to amend with respect to the motion for judgment on the pleadings. He indicated he wanted to amend the complaint "to bring in quite a number of issues" and "actions that have occurred since the last amended complaint." (RT p. 26:lines 25-28.)[2] The court reiterated several times that the motion before it was brought by only two defendants, Grosz and Hartley (RT p. 30:lines 4-7, p. 32:line 25 – p. 33:line 7), and that *the leave to amend being granted was limited to those two defendants*. (See, Res.App. 6a.) Petitioner assured the court several times that he understood this limitation, and the court explained that if Petitioner sought leave beyond that ordered, he was required to file a motion so requesting:

> THE COURT: . . . [¶] Now, with respect to that motion for judgment on the pleadings by Grosz and Hartley, Mr. Vasek, you may respond, remembering that what I have discussed and what *I am indicating to you is the likelihood that I may give you leave to amend with respect to Grosz and Hartley so as to overcome the deficiencies pointed out by the motion and nothing else*. You understand that, sir?

2. Reporter's Transcript (hereinafter "RT") refers to the Reporter's Transcript from the trial court proceedings, which is part of the record in the Court of Appeal.

MR. VASEK: *I understand that, your Honor.* Yes. (RT p. 33:21-28, itals. added.) . . . . .

THE COURT: Okay. *But if you intend to amend as far as other defendants, you have to file a motion for leave to amend,* and you have to set forth in that motion the basis for that amendment . . . *You can't backdoor it* by putting it in as a response for motion for judgment on the pleadings. *So that's not proper, and I will not permit it.* And if you intend to file leave to amend, file your leave to amend. I am not stopping you from doing that. I am telling you that I'm dealing today with two motions: One, a motion to compel on which we have already ruled. Second, a motion for judgment on the pleadings. I'm tempted to give you 30 days to amend with respect to the allegations against Karen Sue Grosz and Phil Hartley, to attempt to state the cause of action against those two people. *I'm not granting you leave to amend as to any other portions of these proceedings. Do you understand that, sir? If you wish to have leave to amend as to other portions of these proceedings, you must file a request to do that.*

MR. VASEK: Well, then I would ask the Court for 60 days for leave to amend with regards to Grosz and Hartley so that I can file a motion prior to amending my complaint for leave to amend the complaint as to all defendants, to include all actions, including actions that were not covered by the opinion of the Court of Appeal. Because many actions took place after the appeals were

taken from the Superior Court that are relevant, very relevant to this case, but occurred after all the defendants were dismissed and the Court of Appeal rendered its opinion. . . .

THE COURT: Let me just put it this way. I'm going to give you 30 days. If you want to file a request for additional time for leave to amend and indicate all the things you want to amend, have at it. But it's not before me properly now. You now have a response to a motion for judgment on the pleadings, and I'm dealing with that only. And I'm going to deal with things in this case, whatever's brought forth, one thing at a time. I'm not going to deal with a broad sweeping request to amend or to do anything else made simply orally or in response to some other motion. You're going to have to make your motion clear so that everybody understands what it is. (RT p. 34:lines 5 – p. 35:line 17, itals. added.)

THE COURT: . . . I'm going to grant your request for a continuance for 30 days to file an amendment to the complaint pertaining to Karen Sue Gross (sic) and Phil Hartley. In the meantime, you file a further motion on my — of things that you have outlined. That's fine. We'll consider it, ... (RT p. 36:line 27 – p. 37:line 3, itals. added.)

The court's July 2, 2002 order entered on Grosz and Hartley's motion for judgment on the pleadings is entirely consistent with the sentiments expressed at the June 17,

2002 hearing. (See Clerk's Transcript ("CT")[3] 294-297 ["Defendants' Grosz and Hartley's motion for judgment on the pleadings is granted. Plaintiff Vasek is granted 30 (thirty) days leave to amend. The plaintiff may either file amendments or may file an amended complaint. Any new allegations by the plaintiff are to be limited solely to addressing the pleading defect placed at issue by Grosz and Hartley's motion for judgment on the pleadings"].)

2. Petitioner's Eighth Amended Complaint Exceeds the Scope of Amendment Permitted by the court.

Despite the court's explicit instructions concerning the limited nature of the leave to amend, Petitioner did exactly what he was ordered not to do — he attempted to "backdoor" new allegations into the eighth amended complaint, which had nothing whatsoever to do with the issues raised by Grosz and Hartley. (Res.App. 6a; CT 54-87; 367-407.) The amended pleading added allegations against numerous defendants, including Respondent Mason, and included an entirely new second cause of action for "malicious prosecution of administrative proceedings," in which he did not even name Grosz and Hartley. (Res.App. 6a; CT 367-407.)

When the parties were back in court on July 25, 2002, in connection with Respondent Mason's demurrer and motion to strike Petitioner's third amended complaint (which the court rendered "moot" in light of the eighth amended complaint), the court recommend that the parties get together to discuss any potential violation by Petitioner of the court's

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3. Clerk's Transcript (hereinafter "CT") refers to the Clerk's transcript of the documents contained in the Superior Court file, which is part of the record on appeal.

order limiting the scope of amendment allowed, and that Petitioner bring the eighth amended complaint into compliance. (Supplemental Clerk's Transcript ("SCT") 503:lines 23-28.)[4] Respondent Mason wrote to Petitioner explaining that the eighth amended complaint was not in compliance with the court's order (SCT 399, 410, 508-510, 514), but Petitioner maintained that the court's order "never had any basis in law." (SCT 513.)

Unable to convince Petitioner of his need to seek leave of court before filing an amended complaint which exceeded the court's order, Respondent Mason filed a demurrer challenging the merits of the claims asserted against him, and a motion to strike all of the claims against him in light of the court's July 2, 2002 order limiting the scope of amendment available without further leave of court. (Res.App. 6a; CT 503-507, 508-510, 1556- 1563, 1564-1569, 2000-2006; SCT 396-600, 601-881.) Petitioner opposed the motion (CT 1862-1878, 1879-1912), and on November 27, 2002, the court granted Respondent Mason's motion to strike. (Res.App. 7a; RT p. 82:line 6 – p. 83:line 24, p. 108:lines 17-23.) After sustaining the demurrers filed by other defendants, the court granted Petitioner 30 days leave to amend. (RT p. 85:line 27 – p. 86:line 10, p. 107:line 24 – p. 108:line 3; see also, Res.App. 7a.)

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4. Supplemental Clerk's Transcript (hereinafter "SCT") refers to portions of the Clerk's Transcript of the documents contained in the Superior Court file, which is part of the record on appeal.

3. After Petitioner Expressly Waives Leave to Amend, the Case is Dismissed.

On December 10, 2002, Petitioner served a "Notice of Plaintiff's Waiver of Leave to Amend (and Plaintiff's Continued Reliance Upon, And Affirmation Of, His Eighth Amended Complaint"). (SCT 1013-1015.) On February 7, 2003, Respondent Mason filed a motion to dismiss on the basis that Petitioner had failed to amend the complaint within the time permitted by law and had expressly declared his intention not to amend his complaint. (CT 2050-2051; SCT 1002-1019.) Petitioner filed no opposition to the motion (CT 2114-2115), and on March 5, 2003, the court granted the motion to dismiss. (Res.App. 7a; CT 2113-2115.)

On March 10, 2006, the court of appeal issued a *unanimous unpublished opinion*, affirming the judgment against Petitioner. (Res.App. 1a-17a.) Petitioner filed a petition for review with the California Supreme Court, which was denied. (Petitioner's Appendix "Pet.App." 32.) This Petition followed.

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any Court of Appeal, nor do they implicate a federal question that has not been decided by this Court. Petitioner's case was dismissed because he *repeatedly* violated the California Code of Civil Procedure, California Rules of Court, orders issued by the trial court, and ultimately "defeated his own claims through procedural error." (Res.App. 4a.) Thus, Petitioner has not carried his burden of establishing any compelling reasons the Court should grant the Petition.

I. The Court of Appeal Properly Reviewed the Trial Court Decisions and Correctly Found no Abuse of Discretion.

Petitioner challenged the court's ruling on Respondent Mason's motion to strike the eighth amended complaint pursuant to Code of Civil Procedure section 435 *et seq.*, which was subject to the abuse of discretion standard. (*CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.) The court's ruling on a motion to dismiss brought pursuant to Code of Civil Procedure section 581(f) was also reviewable for an abuse of discretion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.) The trial court's ruling granting Petitioner 30 days leave to amend (after granting Respondent Mason's motion to strike and sustaining the demurrers filed by other defendants) was likewise subject to the abuse of discretion standard. (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486; *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945.) When leave to amend is permitted and no amendment is attempted, it is presumed on appeal that the complaint states as strong a case as is possible and judgment should be

affirmed on appeal if the unamended complaint (Petitioner's eighth amended complaint) is objectionable on any ground raised on demurrer. (See *Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585; *Orworth v. Southern Pac. Transp. Co.* (1985) 166 Cal.App.3d 452, 457.)

Pursuant to the abuse of discretion standard, the trial court ruling is not to be disturbed absent a showing of "a clear case of abuse" and "a miscarriage of justice." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331; *Denham v. Superior Court (Marsh & Kidder)* (1970) 2 Cal.3d 557, 566.) Discretion is abused only when the trial court decision "exceeds all bounds of reason." (*Denham*, 2 Cal.3d at 566, quoting *Loomis v. Loomis* (1960) 181 Cal.App.2d 345, 348-349.) With regard to Respondent Mason, Petitioner did not and could not dispute that he had not been given leave to file the eighth amended complaint asserting new claims or a new cause of action as against Mason. Thus, Petitioner failed to meet his burden of showing that the court abused its discretion by striking the new allegations. (*Blank*, at 331; *Denham*, at 566.)

II. By Failing to Provide the Court of Appeal with Reasoned Legal Argument and Citation to Appropriate Legal Authority, Petitioner Waived the Arguments He Raised On Appeal.

Petitioner had the burden to present the Court of Appeal with argument and legal authority in support of each point raised. That obligation required more than simply stating bare assertions that the judgment, or any part of it, was erroneous, leaving the Court of Appeal to speculate as to the basis for this argument. It is well established California law that when an appellant asserts a point in his opening brief but fails to

support it with reasoned argument and citation to applicable legal authority, the point is properly treated as waived and passed on without further consideration. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 611; *People v. Stanley* (1995) 10 Cal.4th 764, 793; *Kim v. Sumitomo Bank of Calif.* (1993) 17 Cal.App.4th 974, 979 [Conclusory arguments based on counsel's opinion, without citation to recognized legal authority, disregarded on appeal]; *Stoll v. Shuff* (1994) 22 Cal.App.4th 22, 25, fn. 1; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466.)

Many of the "issues" raised in Petitioner's appellate brief did not contain reasoned legal argument and did not cite a single case in support of Petitioner's argument and further hampered his case on appeal. (See, Res.App. 4a-5a; Pet.App.139-161; see Cal. Rules of Court, Rule 14(a)(1)(B); *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384 ["We need not consider an argument for which no authority is furnished"]; *People ex el. 20th Century Ins. Co. v. Builders Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284.)

III. Respondent Mason's Motion to Strike Was Properly Granted.

The one issue that arguably involved Respondent Mason was entirely irrelevant as it addressed only Respondent Mason's demurrer to the eighth amended complaint. However, Mason's demurrer was deemed "moot" after the court granted Respondent Mason's motion to strike. (RT p. 82:line 6 – p. 83:line 24, p. 108:lines 17-23.) In fact, Petitioner did not present an argument supported by legal authority addressing the propriety of the order granting the motion to strike. Because Petitioner did not and could not articulate a viable legal argument as to any appealable ruling

as to Respondent Mason, his appeal properly failed. (*Leader v. Health Industries of America, Inc.*, (2001) 89 Cal.App.4th 603, 611, citing *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 710-711 [". . . plaintiffs have presented no argument or authority in support of any contention that the trial court erred in sustaining the demurrers. This aspect of plaintiffs' appeal has been abandoned"].) There is a long line of California cases holding that the Court may treat an entire appeal as abandoned, thus warranting its dismissal, if appellant's opening brief fails to articulate any pertinent or intelligent legal argument. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119; *In re Sade Co.* (1996) 13 Cal.4th 952, 994.)

Moreover, Petitioner did not and could not meet his additional burden of showing the errors alleged were prejudicial. (Cal. Const., Art. VI, section 13; Code Civ. Proc. section 475; *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069; *Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337 ["Where any error is relied on for a reversal is not sufficient for appellant to point to the error and rest there"].) The trial court specifically advised Petitioner that the court was "not stopping" him from filing for leave to amend beyond the limitation imposed in the order. (RT p. 34:lines 12-13.)

In fact, Petitioner indicated he would "file a motion prior to amending [his] complaint for leave to amend the complaint as to all defendants, to include all actions, including actions that were not covered by the opinion of the Court of Appeal." (RT p. 34:lines 25 – p. 35:line 6.) For reasons unknown to Respondent Mason, Petitioner never attempted to seek leave of court to add new allegations against defendants other than Grosz and Hartley. His failure to do so was *fatal* to his appeal.

Respondent Mason was dismissed from the case following the granting of his motion to strike all portions of the eighth amended complaint referring to him. The motion to strike was very straightforward: The court specifically granted Petitioner leave to file an amended complaint only as to Grosz and Hartley; Petitioner's eighth amended complaint far exceeded the limited leave granted by the court and violated the law; Petitioner had an open invitation to move for leave beyond this limitation, but he failed to seek leave to amend as to other defendants or other issues. (See, Res.App. 6a; Cal. Code Civ. Proc. § 435.)

Because the eighth amended complaint exceeded the scope of Petitioner's previous claims against Respondent Mason, Mason's motion to dismiss was properly granted. (See, Res.App. 15a; Code Civ. Proc. § 581(f).)

CONCLUSION

Petitioner has not demonstrated any compelling reasons for this Court to grant the Petition. Therefore, Respondent Mason respectfully requests that the Petition be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO FILED MARCH 10, 2006

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION 2

E033583 / E035087

(Super.Ct.No. 254638)

ANTHONY G. VASEK,

Plaintiff and Appellant,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Defendants and Respondents.

OPINION

APPEAL from the Superior Court of Riverside County. Dallas Holmes and Charles D. Field, Judges. Affirmed.

Anthony G. Vasek, in pro. per., for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Jacob A. Appelsmith, Senior Assistant Attorney General, Silvia M. Diaz, Lead

Supervising Deputy Attorney General, and Dana T. Carbozian, Deputy Attorney General, for Defendants and Respondents Karen Sue Grosz and Phil Hartley.

Atkinson, Andelson, Loya, Ruud & Romo, Sherry G. Gordon and John W. Dietrich for Defendants and Respondents Atkinson, Andelson, Loya, Ruud & Romo, Ronald C. Ruud, Sherry G. Gordon and Steven Atkinson.

Briskin, Latzanich & Pene and Katherine B. Pene for Defendant and Respondent Keenan & Associates.

Shea Stokes & Carter, Maria C. Roberts and Shirley A. Gauvin for Defendant and Respondent Roy B. Mason.

Law Offices of Dennis J. Walsh, Dennis J. Walsh and George E. Ordonez for Defendants and Respondents Mt. San Jacinto Community College District et al.

Gilbert, Kelly, Crowley & Jennett, Barbara J. Mandell and Lyndon H. Hong for Defendant and Respondent Royce Lapp.

Appendix

1. *Introduction*[1]

Anthony Vasek appeals from a judgment of dismissal entered after he declined to amend his eighth amended complaint and from a summary judgment entered in favor of defendant Royce Lapp. Vasek, a tenured instructor at Mt. San Jacinto Community College, seeks recovery for an alleged conspiracy against him beginning in April 1989 and continuing until 2004 and beyond. This case is now in its twelfth year of litigation.

Defendants and respondents are the Mt. San Jacinto College District and 26 individual defendants[2] (College District and District Defendants); the law firm of Atkinson, Andelson, Loya, Ruud & Romo, and its individual members, Ronald Ruud and Sherry Gordon (the Attorneys); Keenan &

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1. Vasek filed a request for judicial notice on December 20, 2004. Item A, located at pages one through 16 and 45 through 63 of the appendix to Vasek's request, and Item E appear to have been part of the trial court record below. We deem these documents part of the appellate record by augmentation. (Cal. Rules of Court, rule 12, subd.(a).) We deny the request for judicial notice of Item B, the bankruptcy pleadings, pages 17 through 44 of the appendix. (Evid.Code, § 452, subd. (d).) Item C is already part of the appellate record. Item D is this court's own records.

2. Bobby Avila, Lawrence Barkley, David Bookin, Claire Broyles, Bernard J. Carrigan, William Farrell, Elgin Hushbeck, Eugene Kadow, Marcia Krull, Richard Lowe, Anne Motte, John Motte, Steve Narin, Kazi Nizamuddin, Shahla Razavi, Kelly Roberts, Robert G. Rockwell, Gwendolyn Schlange, Robert Schley, John Seed, Richard Sisk, Karl Sparks, Wayne Stuart, Michael Tuasig, Wally Upper, and M. Anne Walker.

Associates; and four other individuals, Karen Sue Grosz, Phil Hartley, Roy B. Mason, and Lapp.[3]

In a previous opinion (E017343), this court addressed the viability of Vasek's claims. We reversed the trial court's order sustaining the demurrer of the District Defendants (including Mason), acting in their personal capacities; the trial court's order sustaining Attorneys' demurrer; the trial court's order sustaining Keenan's demurrer; the trial court's order granting summary judgment as to individual defendants, Grosz and Hartley; and the trial court's order granting Lapp's motion to strike under Code of Civil Procedure section 425.16.

Here Vasek has defeated his own claims through procedural error. By failing to amend his complaint after issuance of the remittitur from the previous appeal, by filing an amended complaint without leave of court except as to Grosz and Hartley, and by refusing to amend his ultimate pleading after being granted leave to amend, Vasek has finally reached a procedural terminus.

Vasek raises a multitude of issues that we will consider in turn according to the affected party. Our review is hampered by Vasek, acting in propria persona, failing to follow the rules and conventions of appellate procedure: "This court is not inclined to act as counsel for . . . any appellant and furnish a legal argument as to how the trial

3. In our previous opinion, Mason and Lapp were included among the 28 District Defendants, although Lapp had separate representation. In the present appeal, Mason and Lapp appear separately as respondents from the other 26 District Defendants.

court's rulings . . . constituted an abuse of discretion." (*In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164; *Dills v. Redwoods Assocs. Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1.) We further deplore the rhetoric Vasek employs, relying upon ad hominem attacks and other unseemly rhetorical devices, rather than accurate citation to the record and reasoned legal argument.

2. *Factual and Procedural Background*

We have discussed the basic facts of this action in the earlier appellate opinion, which we incorporate by reference. Briefly, the College District employed Vasek as an engineering and mathematics instructor in 1987. After some years of conflict between Vasek and the College District about curriculum and Vasek's qualifications, in August 1993, the College District assigned Vasek to teach remedial mathematics. The chief areas of conflict involved whether the vocational drafting program was a transfer program for engineering and whether Vasek was qualified to teach vocational drafting. In August 1994, Vasek filed the original complaint. After various proceedings, Vasek filed his seventh amended complaint in August 1996. After a final disposition, the trial court dismissed the case. Vasek appealed in March 1997.

In the meantime, a notice to correct deficiencies was issued to Vasek in November 1995 (Ed.Code, §§ 87732 and 87734) and a notice of intent to dismiss Vasek was issued in June 1996. An administrative hearing was conducted in 1997 and, in August 1997, the administrative law judge decided

in favor of Vasek and dismissed the statement of charges and accusation against him.

After the previous appeal was decided in October 2001, the case was remanded to the trial court for further proceedings. Vasek did not file an amended complaint within 30 days, as required by Code of Civil Procedure section 472, subdivision (b), after issuance of the remittitur on January 23, 2002.

In June 2002, the court granted a motion for judgment on the pleadings brought by Grosz and Hartley but granted Vasek leave to file an eighth amended complaint (EAC), "limited solely to addressing the pleading defect placed at issue by Grosz and Hartley's Motion for Judgment on the Pleadings."

Instead, when Vasek filed the EAC in July 2002, he presented new allegations against defendants, including that he had prevailed in the 1997 administrative hearing. The EAC contains two causes of action: one for violation of civil rights (42 U.S.C. § 1983); and a new cause of action for malicious prosecution of administrative proceedings, asserted against 10 District Defendants-Broyles, Kadow, Mason, Motte, Roberts, Rockwell, Rohrabacher, Schlange, Stuart, and Upper-and against the Attorneys. The EAC alleges that August 26, 1993, the date Vasek was demoted, was the date of his injury.

The College District and the District Defendants, the Attorneys, Keenan, Grosz and Hartley, and Mason filed motions to strike and demurrers to the EAC.

Appendix

In November 2002, the court ordered the demurrers sustained and motions to strike granted with leave to amend. Subsequently, Vasek filed a waiver of leave to amend in which he declined to file a ninth amended complaint.

After the latter defendants filed separate motions to dismiss, the court dismissed the action as to them. Vasek appealed in April 2003.

In December 2003, the trial court granted Lapp's motion for summary judgment. Vasek appealed in January 2004.

3. *The "Disenfranchised" Defendants*

As a preliminary matter, we address Vasek's persistent claim that some individual defendants, whom Vasek does not identify by name, were incorrectly omitted or dismissed by the trial court from the case. Vasek has not presented a coherent explanation of who are the missing parties, when they were dismissed or omitted from the case, and why this was wrong.

His reliance on this court's order of July 25, 2002 is misplaced. In that order, we explained that, based on our previous opinion, Vasek could proceed against the individual District Defendants acting in their individual capacities if he amended his complaint. Our previous opinion affected 28 District Defendants, including Lapp who was represented separately. (EO17343, p. 3.) The present appeal involves the same 28 District Defendants, including Lapp and Mason, both now represented separately. The appellate order of July 25, 2002, did not identify or establish there are additional missing

defendants who should be included in the lawsuit. Meanwhile, Vasek acknowledges that all the named defendants are proper respondents. Vasek has offered no legal authority to support his contention that he could not proceed with his lawsuit against the 35 named defendants, who are respondents in this appeal, absent other "disenfranchised" defendants. Therefore, we deem this issue lacking merit, unsupported, and waived on appeal. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

Our resolution of this issue also dispenses with Vasek's argument the trial court should have granted his motions to strike defendants' pleadings and to vacate court orders based on his contention there were other necessary defendants.

4. *Grosz and Hartley*

Vasek sued Grosz in her capacity as a member of the Board of Governors for California Community Colleges. Vasek sued Hartley in his capacity as President of the Academic Senate for California Community Colleges. Vasek's specific allegations against Grosz and Hartley are that, in March 1990, they helped cancel an independent investigation by the Academic Senate of Vasek's grievances. But Vasek also alleges they had left their positions before September 1992. Vasek's injury was sustained in August 1993. The other acts Vasek specifies in his appellant's brief all occurred after August 1993.

Grosz and Hartley filed a demurrer to the EAC on the grounds that the section 1983 claim, the cause of action

directed against them, is time-barred because their only alleged involvement began in March 1990 and ended before September 1992, the beginning of the 1992-1993 academic year. So, a section 1983 claim filed in August 1994 based on an injury sustained in August 1993 was not timely under the then-applicable one-year statute of limitations. (*Knox v. Davis* (9th Cir.2001) 260 F.3d 1009, 1012-1013; *Krupnick v. Duke Energy Morro Bay* (2004) 115 Cal.App.4th 1026, 1028-1030; Code Civ. Proc., §§ 340, subd. (3), and 335.1) We agree that, even if Grosz and Hartley's alleged conduct had continued from March 1990 until September 1992, there are no allegations supporting a timely section 1983 claim in the EAC against these two people based on a complaint filed in August 1994 for an injury sustained in August 1993 but continuing until 1997 and after.

Vasek argues that our previous opinion permitted him to amend his complaint to allege a continuing course of conduct, including an administrative disciplinary proceeding beginning in November 1995 and ending in August 1997. But it is a complete misinterpretation for Vasek to assert we "left the door wide open for Vasek to allege any and all wrongful conduct . . . including factual allegations that occurred after filing the first set of appeals" in March 1997. We offered no such *carte blanche* to Vasek.

Instead, our former opinion suggested Vasek might have been able to amend his section 1983 claim to include allegations of equal protection violations. (E017343, p. 21) We also determined that he had successfully alleged the elements of a section 1983 claim against some defendants. (E017343, pp. 23-24.) But we concluded the College District

and the District Defendants, acting in their official capacity were immune from section 1983 liability, citing *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal .App.4th 1098. (E017343, pp. 24-27.) As to Keenan, even though we overruled the order sustaining the demurrer, we opined amendment was still necessary to state a valid claim. (E017343, p. 53.)

In our last opinion, we noted it was possible to allege a continuing conspiracy. The facts would need to demonstrate the existence of a conspiracy; i.e. that coconspirators have knowledge of and intent to accomplish a planned objective. (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582.) But Vasek had to allege facts, not conclusions, showing a "'series of related acts, one or more of which falls within the limitations period.'" (E017343, p. 43, citing *Green v. Los Angeles County Superintendent* (1989) 883 F.2d 1472, 1480, overruled in *National R.R. Passenger Corp. v. Morgan* (2002) 536 U.S. 101, 114; *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 816.)[4] And, once an injury has occurred, "[m]ere continuance of a conspiracy beyond the date when injury or damage occurs does not extend the statute of limitations. [Citations.] To establish a continuing violation, continued unlawful acts must be demonstrated." (*Compton v. Ide* (9th. Cir.1984) 732 F.2d 1429, 1432-1433.)

Applying the foregoing principles to Grosz and Hartley, we conclude Vasek should have amended his complaint after issuance of the remittitur on appeal. When he finally did

4. We recognize that the "related-acts" test in *Green* was overruled by *Morgan*. But we discuss it because Vasek relies upon it and it may have some continuing viability as to general principles.

amend after receiving leave, he went both too far and not far enough. He added new conclusory allegations but he did not supply the factual predicate necessary to make Grosz and Hartley liable for a continuing conspiracy and certainly not liable for every adverse employment event that affected Vasek after September 1992 when these two people departed the scene.

When a case involves an order sustaining a demurrer with leave to amend and "'[w]hen a plaintiff elects not to amend the complaint, it is presumed that the complaint states as strong a case as is possible [citation]; and the judgment of dismissal must be affirmed if the unamended complaint is objectionable on any ground raised by the demurrer. [Citations.]' [Citation.]" (*Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585.) Because Vasek declined to amend his complaint to make the necessary allegations, the trial court did not abuse its discretion when it dismissed the action as to Grosz and Hartley. (Code Civ. Proc., § 581, subds. (f)(2); *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

The trial court also properly granted Grosz and Hartley's motion to tax Vasek's costs on appeal because the cost memorandum was belatedly filed on August 2, 2002.[5] In order to be timely, the cost memorandum should have been filed by March 4, 2002, which was 40 days after the clerk of the court issued its remittitur on January 23, 2002. (Cal. Rules of Court, rules 26(d), and 870(a)(1); *Hydratec, Inc. v. Sun*

5. Motions to tax costs were also filed by Mason, the College District, the Attorneys, and Keenan. The same analysis applies regarding them and Lapp.

Valley 260 Orchard & Vineyard Co. (1990) 223 Cal.App.3d 924, 929.)[6]

5. *The Attorneys*

The Attorneys were sued because they represented the College District in employment matters and gave advice regarding Vasek's employment. The Attorneys were named as defendants in the third amended complaint, the subject of Vasek's previous appeal, and in the EAC, filed after the trial court granted Grosz and Hartley's motion for judgment on the pleadings with leave to amend. At this juncture, the only issue is whether the trial court properly dismissed the EAC with prejudice after Vasek declined to amend.

For several reasons, we uphold the trial court's dismissal of the EAC. First, dismissal was not an abuse of discretion when Vasek declined to amend after the trial court sustained the Attorneys' demurrer and granted the motion to strike with leave to amend. (Code Civ. Proc., §§ 581, subds. (f)(2) and (4); *Leader v. Health Industries of America, Inc., supra,* 89 Cal.App.4th at p. 612.) The dismissal was also proper because both the demurrer and the motion to strike directed at the EAC were well taken. Vasek had not been given leave to file the EAC asserting more allegations and a new cause of action against the Attorneys. The EAC significantly exceeded in scope the trial court's grant of leave to amend Vasek's claims against Grosz and Hartley. Whatever merit may have existed in his previous versions of the complaint,

6. The District and District defendants withdraw their objection to the appealability of this issue in a letter filed July 21, 2005, with this court.

because Vasek refused to cure the defects in his EAC, the court properly dismissed the action as to the Attorneys. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

6. *Keenan*

Keenan & Associates was the insurance broker and claims adjuster for the College District. Keenan sent notices to Vasek rejecting his claims against the District on March 10 and August 16, 1994. Vasek alleges that Keenan convinced "District officials to not grant Vasek's request for an inquiry into the reasons for his banishment and the cancellation of the planned investigation."

Keenan occupies the same procedural posture as the Attorneys in that Vasek had not been given leave by the trial court to file the EAC asserting new claims against Keenan. For that reason and because the EAC exceeds the scope of Vasek's previous claims against Keenan, the court properly dismissed the action as to Keenan. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

7. *The District*

In the previous appeal, based on *Kirchmann v. Lake Elsinore Unified School District, supra,* 83 Cal.App.4th 1098, we affirmed the judgment dismissing the College District itself and the District Defendants, when acting in their official capacity, (E017343, pp. 26 and 71) but proposed "[i]f . . . plaintiff is alleging the retaliatory deprivation of certain rights and privileges, *his complaint can be amended* to incorporate such allegations in his section 1983 claim.

[Emphasis added.]" (E017343, pp. 21-22.) Therefore, Vasek's claims against the College District or any of the District Defendants, acting officially, were terminated by the last appeal. All that remained was the potential to assert a claim against the District Defendants acting in their personal, rather than official, capacities.

As noted, however, Vasek did not file an amended complaint after the remittitur issued (Code Civ. Proc., § 472, subd. (b)). He also did not seek leave to file an amended complaint against the District Defendants. Nevertheless, in his unauthorized version of the EAC, he again named the College District itself as a defendant and added many new allegations and the new cause of action. Again, as discussed above, Vasek's failure to amend his complaint after the remittitur issued and his subsequent failure to seek leave to amend amply justified the trial court dismissing his case after he refused to file another amended complaint.

We also reject Vasek's urging us to revisit the applicability of *Kirchmann* and its holding that a school district is an instrumentality of the state, exempt from suit under section 1983. There is no cognizable reason to abandon our previous decision on this issue. (E017343, pp. 24-27.)

8. *Mason*

Mason was a College District employee. Vasek alleges that, after he filed his original complaint in 1994, Mason conspired with others to retaliate against Vasek in multiple ways, including by pursuing malicious prosecution of the administrative proceeding against him.

Again, Vasek had not been given leave to file the EAC asserting new claims or a new cause of action against Mason. For that reason and because the EAC exceeds the scope of Vasek's previous claims against Mason, the court properly dismissed the action as to Mason. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

9. *Lapp*

Lapp based his motion for summary judgment on the one-year statute of limitations for a section 1983 claim. According to his supporting evidence, Lapp's one contact with Vasek occurred at a curriculum meeting on April 3, 1989. Lapp was a private consultant who supervised the meeting. After Vasek disrupted the meeting, Lapp wrote a report describing Vasek's conduct and in which he recommended eliminating the subject of drafting from the curriculum project. Lapp had no other contact with Vasek and no contact with the College District after June 1989. Lapp argues that, as a matter of law, this single incident cannot support Vasek's conspiracy claims first advanced against Lapp more than five years later in August 1994.

In opposition, Vasek did not offer any contrary evidence or any evidence demonstrating a continuing conspiracy between Lapp and the other defendants. Instead, he contends evidence of a conspiracy involving Lapp may be inferred from other facts or will be presented at trial.

Applying a de novo standard of review, we affirm the grant of summary judgment in favor of Lapp. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138,

1142.) Inferences cannot be made in a factual void. It is not enough, as Vasek does, to hint at evidence that is promised but never delivered. In opposing summary judgment, a party must supply "'specific facts showing that there is a genuine issue for trial.'" (*Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1286.) We have reviewed the allegations of the complaint and Vasek's sparse submission in opposition to summary judgment and we find nothing to support Vasek's theory of conspiracy liability against Lapp.

We also disregard Vasek's first effort on appeal to assert a motion to tax Lapp's costs because Vasek never filed a motion to tax Lapp's costs in the trial court.

10. *Sanctions*

The trial court imposed sanctions of $1,400 on Vasek for filing the EAC in violation of the court's order allowing him to amend as to Grosz and Hartley only. Vasek has offered no credible argument and no authority as to why sanctions were an abuse of discretion under Code of Civil Procedure section 128.5: "Every trial court may order a party . . . to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous. . . ." We hold the trial court acted properly. Vasek's filing of the EAC was a blatant example of an action that was in bad faith, frivolous, or both.

11. *Disposition*

As Charles Dickens wrote in *Bleak House* about another interminable piece of litigation, it "still drags its dreary length

before the Court, perennially hopeless." While at one point in these proceedings we recognized Vasek may have been able to present a legitimate claim for trial, subsequent actions by him have lost him the right to proceed. We affirm the judgment in favor of defendants and order them, as prevailing parties, to recover their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/ Gaut
J.

We concur:

s/ Ramirez
P.J.

s/ Hollenhorst
J.

Supreme Court, U.S.
FILED
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(6)

No. 06-360

In The Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal Fourth Appellate District, Division Two

RESPONSE OF DISTRICT RESPONDENTS TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This case does not present a decision by a State court that is an important question of federal law that should be decided or settled by this Court. The State court did not decide an important federal question in a way that conflicts with relevant decisions of this Court. *See* Supreme Court Rule 10. Instead, this case involves a Petitioner who, after being afforded several opportunities to perfect his 42 U.S.C. §1983 claim in State court, failed to follow State procedural rules and court orders, resulting in the dismissal of his action.

On October 4, 2001, the California Court of Appeal affirmed the dismissal of Mt. San Jacinto Community College District ("District") and the District Officials in their official capacities. The Appellate Court remanded the action to the trial court on a limited scope wherein Petitioner was given the opportunity to state a Section 1983 cause of action against the District Officials ("District Officials") in their individual capacities and other named defendants. However, Petitioner did not seek leave to amend his complaint after the statutory time limit within which to amend had elapsed, and failed to seek leave to pursue additional claims. Instead, contrary to the court orders that were before him, Petitioner filed an Eighth Amended Complaint which included allegations inconsistent with the Opinion of the Appellate Court, and added an entirely new cause of action which had not been previously alleged by Petitioner. Contrary to the Appellate Court's Opinion affirming dismissal of the District, Petitioner again named the District as a defendant along with the District Officials in their individual capacities (collectively, "District Respondents"). Petitioner appealed after he defeated his own claims through his failure to follow

court orders and procedures which resulted in dismissal of his case. He now petitions this Court for review, which includes the same basis as his previous petition that was denied by this Court in June 2002.

Petitioner was hired by the District in 1987 and was initially assigned to teach engineering/drafting courses. After some years of conflict between Petitioner and the District regarding curriculum and Petitioner's qualifications, Petitioner was reassigned by the District to teach mathematics. The chief areas of conflict involved whether the vocational drafting program was a transfer program for engineering and whether Petitioner was qualified to teach vocational drafting. In August 1994, Petitioner filed his original complaint against the District Respondents and several District related defendants alleging several causes of action. Thereafter, Petitioner filed several lengthy amended complaints which were met with demurrers and sustained by the trial court. District Respondents demurred to Petitioner's Seventh Amended Complaint, which was sustained without leave to amend.

In March 1997, Petitioner filed three separate appeals from the trial court's judgments in favor of the various defendants. The appeals were consolidated and the Appellate Court issued its Opinion on October 4, 2001, affirming the judgments in part and reversing in part. The Appellate Court held, "In sum, we conclude that District and District Officials acting within their official capacity are not "persons" for purposes of Section 1983 claims. District officials acting in their personal capacities, on the other hand, are "persons" subject to suit under section 1983. The trial court properly sustained the demurrer only as to District and District officials in their official capacities." The Appellate Court ruled that Petitioner could amend his

complaint to allege a cause of action under 42 U.S.C. §1983 for retaliation against the District Officials in their personal capacities. The dismissal of the District was affirmed on the grounds that the District is not a person subject to suit under section 1983. By extension, the District Officials in their official capacities could not be sued. (Pet. App. at 47-49)

On January 23, 2002, remittitur was issued from the Appellate Court remanding this case to the trial court. On or about January 25, 2002, Petitioner filed a motion to recall remittitur.

Despite the Appellate Court's directions that Petitioner may be able to amend his complaint to allege a viable Section 1983 claim based on retaliation, Petitioner did not thereafter file an amended complaint within 30 days of the January 23, 2002 remittitur, the statutorily permitted time pursuant to *California Code of Civil Procedure* §472(b). Even after the trial court advised Petitioner that he would need to file a motion for leave to file an amended complaint, Petitioner filed no such motion.

On April 20, 2002, Petitioner filed a renewed motion to recall remittitur with the California Court of Appeal. On May 1, 2002, the California Appellate Court denied Petitioner's renewed motion to recall remittitur. Petitioner sought review by the California Supreme Court, and after that was denied, he petitioned this Court for review. On June 3, 2002, Petitioner's Petition for Writ of Certiorari was denied. (Docket No. 01-1476) The petition was based on a request for review of the Eleventh Amendment immunity, which is the same request included as part of the instant petition.

Petitioner filed a Motion for Continuance and a Request for Admissions wherein he requested that the matters in this action be continued until he could determine the status of individuals which Petitioner described as "disenfranchised defendants."

On June 17, 2002, the Court granted the motion of defendants Karen Sue Grosz ("Grosz") and Phil Hartley ("Hartley") for judgment on the pleadings, and granted Petitioner leave to file an eighth amended complaint "limited solely to addressing the pleading defect placed at issue by Grosz and Hartley's motion for judgment on the pleadings."

On July 17, 2002, Petitioner filed his Eighth Amended Complaint ("EAC"), completely disregarding the Appellate Court's order, as he brought back the District as a defendant and included numerous new and unauthorized allegations against the District and District Officials. The EAC alleged two causes of action: (1) "Deprivation, Under Color of Law, of Rights, Privileges, or Immunities Secured by the Constitution and Laws;" and (2) an entirely new cause of action, "Malicious Prosecution of Administrative Proceeding."

On July 25, 2002, the Appellate Court issued an order again denying Petitioner's Motion for Recall of the Remittitur and stating that District Officials were represented by Dennis J. Walsh and subject to the Appellate Court decision.

On August 16, 2002, District Respondents demurred to the EAC and each cause of action therein and filed a motion to strike portions of the EAC. The District Respondents' demurrer and motion to strike papers clearly

identified the District Official defendants as being represented by counsel.

On August 20, 2002, Petitioner filed a motion to strike defendants' pleadings and to vacate all court orders based on his insistence that there existed "disenfranchised" defendants. District Respondents' opposition to said motion again informed Petitioner that the District Officials were represented by counsel.

On November 27, 2002, the trial court sustained the District Respondents' demurrer as to Petitioner's first cause of action and granted District Respondents' Motion to Strike Portions of the EAC. The trial court granted Petitioner leave to file an amended complaint, but he chose to stand on his EAC and filed a waiver of leave to amend. As the time within which to amend had elapsed, pursuant to *California Code of Civil Procedure* §§581(f)(2) and 581(f)(4), the trial court dismissed District Respondents with prejudice.

Petitioner appealed from the order of dismissal. The Appellate Court affirmed the judgment in favor of Respondents. The Appellate Court found that Petitioner "defeated his own claims by procedural error." (Resp. App. at 3) The Appellate Court stated that Petitioner reached a procedural terminus by failing to amend his complaint after issuance of the remittitur from the previous appeal, filing an amended complaint without leave of court except as to Grosz and Hartley, and refusing to amend his ultimate pleading after being granted leave to amend. (Resp. App. at 3-4)

REASONS FOR DENYING THE WRIT

I. THE PROCEDURAL BACKGROUND OF THIS CASE REVEALS THAT NO REVIEW IS MERITED.

Petitioner's "questions presented for review" are misleading as to the proceedings of the trial court and Appellate Court. First, Petitioner claims that the full content of the initial Appellate Court's decision was communicated to him months after he was required to file trial court papers under deadline. However, Petitioner was in possession of the complete Opinion during that time. Although the Appellate Court acknowledged there was an insignificant typographical error in the labeling of certain subsections of the Opinion, it stated that the Opinion was complete as filed. (Pet. App. at 169)

Secondly, Petitioner asserts that he was prohibited from including the reinstated defendants in his next amended complaint. No such prohibition occurred. Petitioner was advised that he would need to file a motion for leave to amend his complaint, except as to Grosz and Hartley. The trial court merely sustained the demurrer and granted the motion to strike portions of Petitioner's EAC as plead, but gave leave to amend because the EAC did not conform to the rulings of the trial court and the Appellate Court.

Thirdly, Petitioner presents a question regarding Eleventh Amendment immunity which is identical to the question that was presented to this Court in his previous Petition for Writ of Certiorari, which was denied by this

Court on June 3, 2002. (Docket No. 01-1476)[1] The current petition stems from Petitioner's refusal to adhere to the 2001 State Court of Appeal's order affirming dismissal of the District, as Petitioner thereafter amended his complaint to again include the District as a defendant in his Section 1983 claim. In its 2001 Opinion, the California State Court of Appeal specifically held that the District and the District Officials in their official capacities were not "persons" subject to suit under 42 U.S.C. § 1983, and affirmed dismissal of the District and the District officials in their official capacities. (Pet. App. at 48-49) Petitioner now requests this Court to overrule its previous decision to deny certiorari on this same issue. Petitioner has provided no basis upon which he can do this. Under these circumstances, Petitioner should not be allowed to resurrect an issue in his previous petition after it was denied by this Court.

Petitioner has deliberately ignored this Court's previous denial of petition for review, and deliberately ignored the 2001 State court's decision that the District is not a viable defendant to his suit. If review were granted at this juncture, such consideration would create dangerous precedent, encouraging litigants to ignore the decisions of the courts, continue to file actions and reinsert claims previously dismissed, and thereafter petition this Court time and time again, hoping to achieve different results.

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[1] To the extent Petitioner bases his Petition for Writ of Certiorari on the same issues and grounds asserted in his previous 2002 petition, District Respondents object to this current petition on the grounds that this Court lacks Jurisdiction pursuant to Supreme Court Rule 13.1 and 13.2, as more than 90 days have elapsed from the denial of petition for review by the California Supreme Court on January 23, 2002 as to appeals E017343, E020125, and E019009.

II. THE PETITIONER'S PREDICAMENT IS A RESULT OF PETITIONER'S REFUSAL TO FOLLOW STATE COURT PROCEDURAL RULES AND ORDERS.

Petitioner argues that in his particular case, the State court's application of procedure regarding issuance of remittitur and document filing deadlines served to his detriment. This type of issue is not a subject for Supreme Court review.

Petitioner's reliance on *Felder v. Casey*, 487 U.S. 131 (1988) is misplaced because that case related to a notice-of-claim rule that targeted civil rights claims against the State. *See Johnson v. Frankell*, 520 U.S. 911, fn.9 (1997) (finding that a state appellate court rule did not discriminate against Section 1983 qualified immunity determinations and deemed the state procedure to be neutral). The circumstances and conditions for appeal are matters for each State to determine by itself. *McKane v. Durston,* 153 U.S. 684, 688 (1894).

In this case, the California state court procedural rules applied to Respondents as well as Petitioner and did not have an effect of treating Petitioner's claims, including his Section 1983 claim, unequally.

Petitioner's predicament was not due to any unequal treatment by the Appellate Court or trial court, but instead, has resulted from Petitioner's own deliberate refusal to follow the procedural state rules and orders of the court. Petitioner chose to ignore the rulings of the trial court and the Appellate Court, notwithstanding his failure to state a viable cause of action against the District and District Officials in their individual capacities.

Petitioner's characterization of events in the trial court proceedings are misleading. Contrary to Petitioner's representation (Pet., p.4), the trial court never ruled that the "missing defendants" had been dismissed from the case by the Appellate Court. The trial court merely informed Petitioner that the Petitioner's concern with purported "missing defendants" were not relevant to the discovery motions and motion for judgment on the pleadings which had been brought by other defendants in this action.

Contrary to Petitioner's representation (Pet., p.7), the trial court did not impose monetary sanctions on Petitioner on the basis that he included the "missing" defendants in his EAC. The monetary sanctions were related to Petitioner's continuing delay tactics and failure to follow court orders. To this day, Petitioner fails to acknowledge that he deliberately violated the Appellate Court's Opinion, affirming dismissal of the District, when he again named the District as a defendant in his EAC.

As the Appellate Court noted, Petitioner did not identify the purported missing defendants. (Resp. App. at 6) The Appellate Court, the trial court and Respondents understood that the District Officials who were subject to the original appeal were still in the case and represented by counsel. Petitioner refused to recognize this. Petitioner was advised of the District Officials who were represented by the Law Offices of Dennis J. Walsh on several occasions, including in the District Respondents' Demurrer and Motion to Strike Portions of his EAC. Nevertheless, Petitioner continued to dwell on purported "missing" defendants as a basis for not remedying his deficient EAC. The Appellate Court recognized that the individually

named defendants were represented by counsel. (Resp. App. at 6-7) As Petitioner was vague and incoherent in his assertions as to whom was "disenfranchised" or "missing," it appeared that the Petitioner was referring to additional missing defendants. (Resp. App. at 6-7)

The trial court granted the motion of Defendants Grosz and Hartley for judgm nt on the pleadings with leave for Petitioner to file an amended complaint, "*limited solely to addressing the pleading defect placed at issue by Grosz and Hartley's motion for judgment on the pleadings.*" The trial court further stated, "*If you wish to have leave to amend as to other portions of these proceedings, you must file a request to do that.*" Petitioner neither sought nor received leave to amend his complaint to add new substantive causes of action or to reinsert the District as a defendant.

Petitioner filed an EAC which contained allegations in total disregard of the Court's orders, as he brought back the District as a defendant and included numerous new and unauthorized allegations against the District and District Officials.

The Appellate Court's indication that Petitioner could amend his complaint did not relieve him from having to follow the State's pleading requirements. Petitioner's 38-page EAC consisted of 181 paragraphs and contained many broad allegations, along with conclusory allegations of conspiracy. Ultimate facts as opposed to conclusions are required in a complaint. "Conclusory allegations without facts to support them are ambiguous and may be disregarded." *Interior Systems, Inc. v. Del E. Webb Corp.* 121 Cal.App.3d 312, 316 (1981); *Ankeny v. Lockheed Missiles &*

Space Co. 88 Cal.App.3d 531, 537 (1979); *See McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (In finding that the lower court did not abuse its discretion in dismissing the action, the appellate court held that the lower court could require certain detail as may be appropriate in a particular case, and may dismiss the complaint if the order is violated.)

In the instant case, Petitioner did not follow the State's pleading requirements, the State's procedural rules, and court orders. Even after being given another opportunity to perfect his complaint, he instead chose to request dismissal of his case so that he could again appeal the trial court's rulings. Under the above-mentioned circumstances, this case is not the type subject to review by this Court.

III. THE STATE APPELLATE COURT OPINION IS IN CONFORMITY WITH EXISTING LAW.

Petitioner misconstrues the federal and state case law authority in an attempt to create an impression that a conflict exists between the law as set forth by this Court and California State courts. The Appellate Court's decision in *Kirchmann v. Lake Elsinore Unified School Dist.*, 83 Cal.App.4th 1098 (2000) is in accord with the line of federal cases addressing the question of whether a school district is an arm of the state. The Opinion of the Appellate Court in this case, which involves a community college, also comes within the legal framework of cases addressing similar issues. Petitioner simply brings no unsettled issue for review. Therefore, the Petition for Writ of Certiorari should be denied.

In view of California's extensive control over school districts' fiscal affairs and political status, school and college districts are instrumentalities of the state and exempt from suit under Section 1983. *See Kirchmann v. Lake Elsinore Unified School Dist.* 83 Cal.App.4th 1098, 1105 (2000), *cert. denied*, 533 U.S. 902 (2001). As this Court has previously denied certiorari on this point, there is no basis whatsoever to revisit the issue of whether the District is a proper defendant in a Section 1983 claim.

There is no conflict of law regarding Eleventh Amendment immunity afforded to California college districts. States have great latitude to establish the structure and jurisdiction of their own courts. In *Howlett by and through Howlett v. Rose*, 496 U.S. 356 (1990), this Court explained:

> The requirement that a state court of competent jurisdiction treat federal law as the law of the land *does not necessarily include within it a requirement that the [s]tate create a court competent to hear the case in which the federal claim is presented.* The general rule, 'bottomed deeply in belief in the importance of state control of state judicial procedure, is that *federal law takes the state courts as it finds them.*' [H. Hart, *The Relations Between State and Federal Law,* 54 Colum. L.Rev. 489, 508 (1954); citations.] The [s]tates thus have great latitude to establish the structure and jurisdiction of their own courts. (Emphases added.)

Howlett, 496 U.S. at 372.

Federal and California state law precedent reveal that no conflict exists as to determining whether Eleventh Amendment immunity is afforded to the District. "[T]he question of whether a particular state agency has the

same kind of independent status as a county or is instead an arm of the State, and therefore 'one of the United States' within the meaning of the Eleventh Amendment, is a question of federal law. But that federal question can be answered only after considering the provisions of state law that define the agency's character." *Regents of Univ. of Cal. v. Doe*, 519 U.S. 425, 429, fn.5 (1997). The court in *Kirchmann v. Lake Elsinore Unified School Dist.* 83 Cal.App.4th 1098, 1106 (2000) applied the same multi-factored balancing test that federal decisions have found to be relevant in determining whether a state entity should have Eleventh Amendment immunity. *See Belanger v. Madera Unified School Dist.*, 963 F.2d 248, 251 (9th Cir. 1992); *see also, Mt. Healthy City Board of Ed. v. Doyle,* 429 U.S. 274, 280 (1977). Thus, the courts, both federal and state, have applied the same analysis to make this determination. Therefore, the balancing test used by the courts is well settled and no conflict exists in this area of the law.

The federal courts also have extended Eleventh Amendment immunity from Section 1983 claims to California community college districts in *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988), *cert. denied,* 490 U.S. 1081 (1989); *Cerrato v. San Francisco Community College Dist.*, 26 F.3d 968, 972 (9th Cir. 1994). While some other state courts have used the same balancing test for determining whether a school district is an arm of the State and have found that their government entity structures do not afford their school districts with Eleventh Amendment immunity, it does not automatically follow that California college districts are subject to such claims. The same analysis as applied by

Mitchell and *Kirchmann, supra,* to California schools and colleges has had a different outcome due, in part, to the unique circumstance of the educational system in California. This existing settled law, which involves application of the balancing test to the circumstances, allows for this type of result.

Petitioner inaccurately quotes *Missouri v. Jenkins* 495 U.S. 33, 56, fn.20 (1990), as the Court's statement that the Eleventh Amendment does not afford school boards immunity from suit was limited to those types of school boards like the one in *Missouri.* It was not made as an all encompassing edict as proffered by Petitioner.

In citing *Duke v. Grady Municipal Schools*, 127 F.3d 972, 981 (10th Cir. 1997), Petitioner misinterprets the case law, as the court in that case did not state that a clear and workable test was desperately needed in this area of the law.

Petitioner's reliance on *Doe v. Lawrence Livermore National Laboratory*, 65 F.3d 771 (9th Cir. 1995) also is misguided, as that case was overruled by this Court in *Regents of Univ. of Cal. v. Doe*, 519 U.S. 425 (1997). In *Doe*, the Court found that the Eleventh Amendment protected the Regents of the University of California from the risk of liability even where the State could be indemnified by a third party. *Id.* at 905.

The petition further asserts that this case presents a question of important public policy deserving review by this Court. However, the facts of this case do not bear this out. Although Petitioner states that a state agency is barred from marshaling its resources and powers to forcibly impose beliefs upon unwilling recipients, Petitioner's lawsuit for money damages was based on something completely

different in that he alleged he was retaliated against for questioning whether the vocational drafting program was a transfer program for engineering. Contrary to Petitioner's assertion, Petitioner's suit does not involve any issues of promulgating false teachings. Petitioner is simply attempting to give greater import to his case where it does not exist. Moreover, Petitioner's argument does not overcome the District's Eleventh Amendment immunity.

In summary, the petition does not raise any issue on Eleventh Amendment immunity which deserves review by this Court. This Court previously denied certiorari on the same type of claims in *Kirchmann* and *Mitchell*. Petitioner provides no basis which merits a complete reversal of these denials.

CONCLUSION

Petitioner has not provided a compelling reason for review by this Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ANTHONY G. VASEK, Plaintiff and Appellant, v. MT. SAN JACINTO COLLEGE DISTRICT et al., Defendants and Respondents.	E033583/E035087 (Super.Ct.No. 254638) OPINION (Filed Mar. 10, 2006)

APPEAL from the Superior Court of Riverside County. Dallas Holmes and Charles D. Field, Judges. Affirmed.

Anthony G. Vasek, in pro. per., for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Jacob A. Appelsmith, Senior Assistant Attorney General, Silvia M. Diaz, Lead Supervising Deputy Attorney General, and Dana T. Cartozian, Deputy Attorney General, for Defendants and Respondents Karen Sue Grosz and Phil Hartley.

Atkinson, Andelson, Loya, Ruud & Romo, Sherry G. Gordon and John W. Dietrich for Defendants and Respondents Atkinson, Andelson, Loya, Ruud & Romo, Ronald C. Ruud, Sherry G. Gordon and Steven Atkinson.

Briskin, Latzanich & Pene and Katherine B. Pene for Defendant and Respondent Keenan & Associates.

Shea Stokes & Carter, Maria C. Roberts and Shirley A. Gauvin for Defendant and Respondent Roy B. Mason.

Law Offices of Dennis J. Walsh, Dennis J. Walsh and George E. Ordonez for Defendants and Respondents Mt. San Jacinto Community College District et al.

Gilbert, Kelly, Crowley & Jennett, Barbara J. Mandell and Lyndon H. Hong for Defendant and Respondent Royce Lapp.

1. Introduction[1]

Anthony Vasek appeals from a judgment of dismissal entered after he declined to amend his eighth amended complaint and from a summary judgment entered in favor of defendant Royce Lapp. Vasek, a tenured instructor at Mt. San Jacinto Community College, seeks recovery for an alleged conspiracy against him beginning in April 1989

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[1] Vasek filed a request for judicial notice on December 20, 2004. Item A, located at pages one through 16 and 45 through 63 of the appendix to Vasek's request, and Item E appear to have been part of the trial court record below. We deem these documents part of the appellate record by augmentation. (Cal. Rules of Court, rule 12, subd.(a).) We deny the request for judicial notice of Item B, the bankruptcy pleadings, pages 17 through 44 of the appendix. (Evid. Code, § 452, subd. (d).) Item C is already part of the appellate record. Item D is this court's own records.

and continuing until 2004 and beyond. This case is now in its twelfth year of litigation.

Defendants and respondents are the Mt. San Jacinto College District and 26 individual defendants[2] (College District and District Defendants); the law firm of Atkinson, Andelson, Loya, Ruud & Romo, and its individual members, Ronald Ruud and Sherry Gordon (the Attorneys); Keenan & Associates; and four other individuals, Karen Sue Grosz, Phil Hartley, Roy B. Mason, and Lapp.[3]

In a previous opinion (E017343), this court addressed the viability of Vasek's claims. We reversed the trial court's order sustaining the demurrer of the District Defendants (including Mason), acting in their personal capacities; the trial court's order sustaining Attorneys' demurrer; the trial court's order sustaining Keenan's demurrer; the trial court's order granting summary judgment as to individual defendants, Grosz and Hartley; and the trial court's order granting Lapp's motion to strike under Code of Civil Procedure section 425.16.

Here Vasek has defeated his own claims through procedural error. By failing to amend his complaint after issuance of the remittitur from the previous appeal, by

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[2] Bobby Avila, Lawrence Barkley, David Bookin, Claire Broyles, Bernard J. Carrigan, William Farrell, Elgin Hushbeck, Eugene Kadow, Marcia Krull, Richard Lowe, Anne Motte, John Motte, Steve Narin, Kazi Nizamuddin, Shahla Razavi, Kelly Roberts, Robert G. Rockwell, Gwendolyn Schlange, Robert Schley, John Seed, Richard Sisk, Karl Sparks, Wayne Stuart, Michael Tuasig, Wally Upper, and M. Anne Walker.

[3] In our previous opinion, Mason and Lapp were included among the 28 District Defendants, although Lapp had separate representation. In the present appeal, Mason and Lapp appear separately as respondents from the other 26 District Defendants.

filing an amended complaint without leave of court except as to Grosz and Hartley, and by refusing to amend his ultimate pleading after being granted leave to amend, Vasek has finally reached a procedural terminus.

Vasek raises a multitude of issues that we will consider in turn according to the affected party. Our review is hampered by Vasek, acting in propria persona, failing to follow the rules and conventions of appellate procedure: "This court is not inclined to act as counsel for . . . any appellant and furnish a legal argument as to how the trial court's rulings . . . constituted an abuse of discretion." (*In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164; *Dills v. Redwoods Assocs. Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1.) We further deplore the rhetoric Vasek employs, relying upon ad hominem attacks and other unseemly rhetorical devices, rather than accurate citation to the record and reasoned legal argument.

2. Factual and Procedural Background

We have discussed the basic facts of this action in the earlier appellate opinion, which we incorporate by reference. Briefly, the College District employed Vasek as an engineering and mathematics instructor in 1987. After some years of conflict between Vasek and the College District about curriculum and Vasek's qualifications, in August 1993, the College District assigned Vasek to teach remedial mathematics. The chief areas of conflict involved whether the vocational drafting program was a transfer program for engineering and whether Vasek was qualified to teach vocational drafting. In August 1994, Vasek filed the original complaint. After various proceedings, Vasek filed his seventh amended complaint in August 1996. After

a final disposition, the trial court dismissed the case. Vasek appealed in March 1997.

In the meantime, a notice to correct deficiencies was issued to Vasek in November 1995 (Ed.Code, §§ 87732 and 87734) and a notice of intent to dismiss Vasek was issued in June 1996. An administrative hearing was conducted in 1997 and, in August 1997, the administrative law judge decided in favor of Vasek and dismissed the statement of charges and accusation against him.

After the previous appeal was decided in October 2001, the case was remanded to the trial court for further proceedings. Vasek did not file an amended complaint within 30 days, as required by Code of Civil Procedure section 472, subdivision (b), after issuance of the remittitur on January 23, 2002.

In June 2002, the court granted a motion for judgment on the pleadings brought by Grosz and Hartley but granted Vasek leave to file an eighth amended complaint (EAC), "limited solely to addressing the pleading defect placed at issue by Grosz and Hartley's Motion for Judgment on the Pleadings."

Instead, when Vasek filed the EAC in July 2002, he presented new allegations against defendants, including that he had prevailed in the 1997 administrative hearing. The EAC contains two causes of action: one for violation of civil rights (42 U.S.C. § 1983); and a new cause of action for malicious prosecution of administrative proceedings, asserted against 10 District Defendants – Broyles, Kadow, Mason, Motte, Roberts, Rockwell, Rohrabacher, Schlange, Stuart, and Upper – and against the Attorneys. The EAC alleges that August 26, 1993, the date Vasek was demoted, was the date of his injury.

The College District and the District Defendants, the Attorneys, Keenan, Grosz and Hartley, and Mason filed motions to strike and demurrers to the EAC.

In November 2002, the court ordered the demurrers sustained and motions to strike granted with leave to amend. Subsequently, Vasek filed a waiver of leave to amend in which he declined to file a ninth amended complaint.

After the latter defendants filed separate motions to dismiss, the court dismissed the action as to them. Vasek appealed in April 2003.

In December 2003, the trial court granted Lapp's motion for summary judgment. Vasek appealed in January 2004.

3. The "Disenfranchised" Defendants

As a preliminary matter, we address Vasek's persistent claim that some individual defendants, whom Vasek does not identify by name, were incorrectly omitted or dismissed by the trial court from the case. Vasek has not presented a coherent explanation of who are the missing parties, when they were dismissed or omitted from the case, and why this was wrong.

His reliance on this court's order of July 25, 2002 is misplaced. In that order, we explained that, based on our previous opinion, Vasek could proceed against the individual District Defendants acting in their individual capacities if he amended his complaint. Our previous opinion affected 28 District Defendants, including Lapp who was represented separately. (EO17343, p. 3.) The present appeal involves the same 28 District Defendants,

including Lapp and Mason, both now represented separately. The appellate order of July 25, 2002, did not identify or establish there are additional missing defendants who should be included in the lawsuit. Meanwhile, Vasek acknowledges that all the named defendants are proper respondents. Vasek has offered no legal authority to support his contention that he could not proceed with his lawsuit against the 35 named defendants, who are respondents in this appeal, absent other "disenfranchised" defendants. Therefore, we deem this issue lacking merit, unsupported, and waived on appeal. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

Our resolution of this issue also dispenses with Vasek's argument the trial court should have granted his motions to strike defendants' pleadings and to vacate court orders based on his contention there were other necessary defendants.

4. Grosz and Hartley

Vasek sued Grosz in her capacity as a member of the Board of Governors for California Community Colleges. Vasek sued Hartley in his capacity as President of the Academic Senate for California Community Colleges. Vasek's specific allegations against Grosz and Hartley are that, in March 1990, they helped cancel an independent investigation by the Academic Senate of Vasek's grievances. But Vasek also alleges they had left their positions before September 1992. Vasek's injury was sustained in August 1993. The other acts Vasek specifies in his appellant's brief all occurred after August 1993.

Grosz and Hartley filed a demurrer to the EAC on the grounds that the section 1983 claim, the cause of action directed against them, is time-barred because their only alleged involvement began in March 1990 and ended before September 1992, the beginning of the 1992-1993 academic year. So, a section 1983 claim filed in August 1994 based on an injury sustained in August 1993 was not timely under the then-applicable one-year statute of limitations. (*Knox v. Davis* (9th Cir.2001) 260 F.3d 1009, 1012-1013; *Krupnick v. Duke Energy Morro Bay* (2004) 115 Cal.App.4th 1026, 1028-1030; Code Civ. Proc., §§ 340, subd. (3), and 335.1) We agree that, even if Grosz and Hartley's alleged conduct had continued from March 1990 until September 1992, there are no allegations supporting a timely section 1983 claim in the EAC against these two people based on a complaint filed in August 1994 for an injury sustained in August 1993 but continuing until 1997 and after.

Vasek argues that our previous opinion permitted him to amend his complaint to allege a continuing course of conduct, including an administrative disciplinary proceeding beginning in November 1995 and ending in August 1997. But it is a complete misinterpretation for Vasek to assert we "left the door wide open for Vasek to allege any and all wrongful conduct . . . including factual allegations that occurred after filing the first set of appeals" in March 1997. We offered no such *carte blanche* to Vasek.

Instead, our former opinion suggested Vasek might have been able to amend his section 1983 claim to include allegations of equal protection violations. (E017343, p. 21) We also determined that he had successfully alleged the elements of a section 1983 claim against some defendants. (E017343, pp. 23-24.) But we concluded the College

District and the District Defendants, acting in their official capacity were immune from section 1983 liability, citing *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal .App.4th 1098. (E017343, pp. 24-27.) As to Keenan, even though we overruled the order sustaining the demurrer, we opined amendment was still necessary to state a valid claim. (E017343, p. 53.)

In our last opinion, we noted it was possible to allege a continuing conspiracy. The facts would need to demonstrate the existence of a conspiracy; i.e. that coconspirators have knowledge of and intent to accomplish a planned objective. (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582.) But Vasek had to allege facts, not conclusions, showing a "'series of related acts, one or more of which falls within the limitations period.'" (E017343, p. 43, citing *Green v. Los Angeles County Superintendent* (1989) 883 F.2d 1472, 1480, overruled in *National R.R. Passenger Corp. v. Morgan* (2002) 536 U.S. 101, 114; *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 816.)[4] And, once an injury has occurred, "[m]ere continuance of a conspiracy beyond the date when injury or damage occurs does not extend the statute of limitations. [Citations.] To establish a continuing violation, continued unlawful acts must be demonstrated." (*Compton v. Ide* (9th. Cir.1984) 732 F.2d 1429, 1432-1433.)

Applying the foregoing principles to Grosz and Hartley, we conclude Vasek should have amended his complaint after issuance of the remittitur on appeal. When he finally

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[4] We recognize that the "related-acts" test in *Green* was overruled by *Morgan*. But we discuss it because Vasek relies upon it and it may have some continuing viability as to general principles.

did amend after receiving leave, he went both too far and not far enough. He added new conclusory allegations but he did not supply the factual predicate necessary to make Grosz and Hartley liable for a continuing conspiracy and certainly not liable for every adverse employment event that affected Vasek after September 1992 when these two people departed the scene.

When a case involves an order sustaining a demurrer with leave to amend and "'[w]hen a plaintiff elects not to amend the complaint, it is presumed that the complaint states as strong a case as is possible [citation]; and the judgment of dismissal must be affirmed if the unamended complaint is objectionable on any ground raised by the demurrer. [Citations.]' [Citation.]" (*Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585.) Because Vasek declined to amend his complaint to make the necessary allegations, the trial court did not abuse its discretion when it dismissed the action as to Grosz and Hartley. (Code Civ. Proc., § 581, subds. (f)(2); *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

The trial court also properly granted Grosz and Hartley's motion to tax Vasek's costs on appeal because the cost memorandum was belatedly filed on August 2, 2002.[5] In order to be timely, the cost memorandum should have been filed by March 4, 2002, which was 40 days after the clerk of the court issued its remittitur on January 23, 2002. (Cal. Rules of Court, rules 26(d), and 870(a)(1);

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[5] Motions to tax costs were also filed by Mason, the College District, the Attorneys, and Keenan. The same analysis applies regarding them and Lapp.

Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co. (1990) 223 Cal.App.3d 924, 929.)[6]

5. The Attorneys

The Attorneys were sued because they represented the College District in employment matters and gave advice regarding Vasek's employment. The Attorneys were named as defendants in the third amended complaint, the subject of Vasek's previous appeal, and in the EAC, filed after the trial court granted Grosz and Hartley's motion for judgment on the pleadings with leave to amend. At this juncture, the only issue is whether the trial court properly dismissed the EAC with prejudice after Vasek declined to amend.

For several reasons, we uphold the trial court's dismissal of the EAC. First, dismissal was not an abuse of discretion when Vasek declined to amend after the trial court sustained the Attorneys' demurrer and granted the motion to strike with leave to amend. (Code Civ. Proc., §§ 581, subds. (f)(2) and (4); *Leader v. Health Industries of America, Inc., supra,* 89 Cal.App.4th at p. 612.) The dismissal was also proper because both the demurrer and the motion to strike directed at the EAC were well taken. Vasek had not been given leave to file the EAC asserting more allegations and a new cause of action against the Attorneys. The EAC significantly exceeded in scope the trial court's grant of leave to amend Vasek's claims against Grosz and Hartley. Whatever merit may have existed in

[6] The District and District defendants withdraw their objection to the appealability of this issue in a letter filed July 21, 2005, with this court.

his previous versions of the complaint, because Vasek refused to cure the defects in his EAC, the court properly dismissed the action as to the Attorneys. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

6. Keenan

Keenan & Associates was the insurance broker and claims adjuster for the College District. Keenan sent notices to Vasek rejecting his claims against the District on March 10 and August 16, 1994. Vasek alleges that Keenan convinced "District officials to not grant Vasek's request for an inquiry into the reasons for his banishment and the cancellation of the planned investigation."

Keenan occupies the same procedural posture as the Attorneys in that Vasek had not been given leave by the trial court to file the EAC asserting new claims against Keenan. For that reason and because the EAC exceeds the scope of Vasek's previous claims against Keenan, the court properly dismissed the action as to Keenan. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

7. The District

In the previous appeal, based on *Kirchmann v. Lake Elsinore Unified School District, supra,* 83 Cal.App.4th 1098, we affirmed the judgment dismissing the College District itself and the District Defendants, when acting in their official capacity, (E017343, pp. 26 and 71) but proposed "[i]f . . . plaintiff is alleging the retaliatory deprivation of certain rights and privileges, *his complaint can be amended* to incorporate such allegations in his section 1983 claim. [Emphasis added.]" (E017343, pp. 21-22.) Therefore, Vasek's claims against the College District or

any of the District Defendants, acting officially, were terminated by the last appeal. All that remained was the potential to assert a claim against the District Defendants acting in their personal, rather than official, capacities.

As noted, however, Vasek did not file an amended complaint after the remittitur issued (Code Civ. Proc., § 472, subd. (b)). He also did not seek leave to file an amended complaint against the District Defendants. Nevertheless, in his unauthorized version of the EAC, he again named the College District itself as a defendant and added many new allegations and the new cause of action. Again, as discussed above, Vasek's failure to amend his complaint after the remittitur issued and his subsequent failure to seek leave to amend amply justified the trial court dismissing his case after he refused to file another amended complaint.

We also reject Vasek's urging us to revisit the applicability of *Kirchmann* and its holding that a school district is an instrumentality of the state, exempt from suit under section 1983. There is no cognizable reason to abandon our previous decision on this issue. (E017343, pp. 24-27.)

8. Mason

Mason was a College District employee. Vasek alleges that, after he filed his original complaint in 1994, Mason conspired with others to retaliate against Vasek in multiple ways, including by pursuing malicious prosecution of the administrative proceeding against him.

Again, Vasek had not been given leave to file the EAC asserting new claims or a new cause of action against Mason. For that reason and because the EAC exceeds the

scope of Vasek's previous claims against Mason, the court properly dismissed the action as to Mason. (*Soliz v. Williams, supra,* 74 Cal.App.4th 577.)

9. Lapp

Lapp based his motion for summary judgment on the one-year statute of limitations for a section 1983 claim. According to his supporting evidence, Lapp's one contact with Vasek occurred at a curriculum meeting on April 3, 1989. Lapp was a private consultant who supervised the meeting. After Vasek disrupted the meeting, Lapp wrote a report describing Vasek's conduct and in which he recommended eliminating the subject of drafting from the curriculum project. Lapp had no other contact with Vasek and no contact with the College District after June 1989. Lapp argues that, as a matter of law, this single incident cannot support Vasek's conspiracy claims first advanced against Lapp more than five years later in August 1994.

In opposition, Vasek did not offer any contrary evidence or any evidence demonstrating a continuing conspiracy between Lapp and the other defendants. Instead, he contends evidence of a conspiracy involving Lapp may be inferred from other facts or will be presented at trial.

Applying a de novo standard of review, we affirm the grant of summary judgment in favor of Lapp. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) Inferences cannot be made in a factual void. It is not enough, as Vasek does, to hint at evidence that is promised but never delivered. In opposing summary judgment, a party must supply "'specific facts showing that there is a genuine issue for trial.'" (*Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1286.) We

have reviewed the allegations of the complaint and Vasek's sparse submission in opposition to summary judgment and we find nothing to support Vasek's theory of conspiracy liability against Lapp.

We also disregard Vasek's first effort on appeal to assert a motion to tax Lapp's costs because Vasek never filed a motion to tax Lapp's costs in the trial court.

10. Sanctions

The trial court imposed sanctions of $1,400 on Vasek for filing the EAC in violation of the court's order allowing him to amend as to Grosz and Hartley only. Vasek has offered no credible argument and no authority as to why sanctions were an abuse of discretion under Code of Civil Procedure section 128.5: "Every trial court may order a party . . . to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous. . . . " We hold the trial court acted properly. Vasek's filing of the EAC was a blatant example of an action that was in bad faith, frivolous, or both.

11. Disposition

As Charles Dickens wrote in *Bleak House* about another interminable piece of litigation, it "still drags its dreary length before the Court, perennially hopeless." While at one point in these proceedings we recognized Vasek may have been able to present a legitimate claim for trial, subsequent actions by him have lost him the right to proceed. We affirm the judgment in favor of defendants and order them, as prevailing parties, to recover their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/ Gaut
J.

We concur:

s/Ramirez
P.J.

s/Hollenhorst
J.

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(4)

No. 06-360

In The

Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

REPLY TO DISTRICT RESPONDENTS' OPPOSITION

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PETITIONER'S RESPONSES TO DISTRICT RESPONDENTS' FLAWED ARGUMENTS

Three separate oppositions to the instant petition were filed by Respondent Keenan, Respondent Mason, and District Respondents. Because of the overlapping nature of respondents' arguments, the discussion of some of the points raised by District Respondents' opposition may appear in Petitioner's replies to the two other oppositions.

I. Petitioner cannot be required to ascertain *clairvoyantly* whether the appellate opinion was complete as filed.

Petitioner is a man of science. He does not indulge in speculation. He is trained to rely solely on facts. The opinion in his possession indicated that an entire section had been omitted. It goes beyond the pale of reason to insist, as District Respondents do (*cf.*, District's Opp., p. 6), that Petitioner should have been able to deduce clairvoyantly that the appellate court's opinion was complete as filed even though an entire section of the opinion was shown to be missing. The appellate court clarified the matter belatedly. Every reasonable person will agree that the full content of the initial appellate court's decision was not communicated definitively to Petitioner until months after he was required to file trial court papers under deadline.

II. The absence of certain defendants from the case precluded Petitioner from conducting full discovery, thereby making it impossible for him to allege more specific facts no matter how many opportunities might be given him to perfect his complaint.

On page 10 of their opposition, District Respondents complain that Petitioner's 8th amended complaint "contained

many broad allegations, along with conclusory allegations of conspiracy." However, the trial court's exclusion of many District Defendants from the case precluded Petitioner from conducting full discovery, thereby making it impossible for him to allege more specific facts no matter how many opportunities might be given him to perfect his complaint.

In each of his complaints, Petitioner had repeatedly stated "that what is known of said conspiracy today represents only 'the tip of the iceberg,' and that the full extent of said conspiracy is yet to be discovered." (Paragraph 156 of Petitioner's 8th amended complaint.) To get to the bottom of it all, Petitioner needed to have the full complement of District Defendants included in the trial court proceedings on remand.

Indeed, since the time the dismissals were entered in this case, Petitioner has found out, quite by accident, that District had stripped him of some 10 years of teaching credit without his consent or knowledge. This occurred at the time District brought the more than 40 trumped-up charges of dismissal against him. The resulting impact is that Petitioner was shortchanged by thousands of dollars each year for more than 10 years. In the meantime, all recently graduated doctorates on the faculty have surpassed Petitioner on the salary schedule. When confronted by Petitioner at a meeting had on November 20, 2006, District Respondent bulked at placing Petitioner where he belongs on the salary schedule. Had Petitioner been able to depose certain of the "missing" defendants, he would have been able to discover and allege this "continuing" violation.

III. There is incontrovertible evidence that sanctions were imposed upon Petitioner for his having insisted that the "missing" defendants belonged in the case and for his having included them in his 8th amended complaint.

Early in the trial court proceedings, Respondent Mason had served upon Petitioner a deposition notice which Petitioner refused to honor on the grounds that said notice had not been served upon the "missing" parties, and that failure to do so compromised Petitioner's ability to preserve his right to limit his exposure to depositions as provided by California Code of Civil Procedure §2025(t). (1 E033583 CT 259-273.) In her declaration supporting her motion to compel, Mason's attorney made statements known by Petitioner to be false. So, at the hearing of said motion, noting that Mason's attorney had declared, under oath, that she had personal knowledge of each of the facts set forth in her declaration *and could competently testify thereto*, Petitioner sought to conduct a direct examination of Mason's attorney on matters contained in her declaration and motion.

The trial court, however, would have none of that. Abruptly interrupting Petitioner, the trial court pronounced Petitioner's arguments regarding the need to restore the "disenfranchised" parties "silly" and imposed sanctions of $750 on Petitioner for "taking up the Court's time with such arguments." (E033583 RT 39-40.)

> "Sir, the way you attack the declaration is not to come here to this hearing and attack it verbally *with a series of statements orally unsworn in court* to do it. That is not the way these matters are handled. If you want to practice law, sir, you're going to be held to the same standards as lawyers. This hearing is concluded. Thank you." (E033583 RT 41, lines 9-14; emphasis is added.)

But in fact, Petitioner had planned to attack counsel's declaration *by her own orally sworn statements* in open court; and Petitioner's opposition had clearly stated that that was what he planned to do: "At the hearing of this motion to

compel, Vasek will present oral testimony (by Ms. Roberts and others) which will establish her propensity to misrepresent the facts to Vasek and to this Court." (1 E033583 CT 265, lines 1-3.)

In a subsequent hearing on Mason's demurrer to Petitioner's 3rd amended complaint, Petitioner again attempted to set the record straight with regard to falsehoods stated by Mason's attorney in her reply to Petitioner's opposition and reiterated by her during the hearing. (3 E033583 CT 649, line 21 to 3 E033583 CT 650, line 12.) Abruptly interrupting Petitioner, the trial court alluded to "the falicy [sic] [Petitioner] espoused" without making clear precisely what the court was referring to. The trial court then continued with vague and unspecified references to "problems that historically beset this case."

"I've read enough of this file to see the repetitive motif in these proceedings," the trial court said, without identifying what the court had read or what precisely the court saw as "the repetitive motif." Warning Petitioner not to "go off on a philosophical tangent that you created that has nothing to do with the legal framework of this case," the trial court threatened Petitioner with "sanctions of true substance" for "work you made attorneys do with responding to documents you should not file." The trial court never made clear to Petitioner how Petitioner was to determine which "documents [he] should not file" in order to avoid the imposition of sanctions and still be able to exercise his right to protect and pursue his interests in the litigation. (3 E033583 CT 650-651.)

The trial court later imposed additional sanctions totaling $1400, making it clear that it was doing so "pursuant to CCP section 128.5 because [Petitioner's] conduct in amending the complaint *as to defendants other than Grosz and Hartley* is frivolous and in bad faith." (E033583 RT 107,

lines 15-17.) Thus, District Respondents' statement, on page 9 of their opposition, that "the trial court did not impose monetary sanctions on Petitioner on the basis that he included the 'missing' defendants in his EAC" is patently untrue.

IV. No matter how Respondents parse their words, no one can reasonably argue with the fact that the trial court's imposition of deadlines, that predated confirmation of the contents of the appellate opinion in the original appeal and the reinstatement of the "missing" defendants in the remanded action, operated as a denial of Petitioner's equal protection rights and violated the intent of the *Felder* holding.

While Respondents glibly dance around the topic in their oppositions, they never directly address the constitutional and statutory ramifications of the state's imposition of deadlines that *predated* confirmation of the contents of the appellate opinion in the original appeal and the reinstatement of the "missing" defendants in the remanded action.

V. Respondents cite cases that do not address District's all out attack on academic freedom.

On page 13 of their opposition, District Respondents cite cases that deal with factual issues that are tangential to the workings of an educational institution. None of these cases involved attacks on academic freedom.

District Respondents claim on pages 14-15 that Petitioner is giving greater import to his case than his case deserves. They insist Petitioner's lawsuit does not involve the marshaling of state resources to forcibly impose beliefs upon unwilling recipients. The facts, however, contradict Respondents' statements.

In response to Petitioner's efforts to address academic freedom issues, the District took extreme and severe measures including, but not limited to, canceling the visit of a team of outside educators invited by the District's Academic Senate to investigate abuses of academic freedom by the District, dissolving the District's Academic Senate, of which Petitioner was the remaining member after others were coerced into resigning, and banishing Petitioner from campus "because of the serious accusations contained in [Petitioner's] 'open letter' to the Board." Petitioner was physically escorted off campus and told that he would be subject to arrest if he set foot on District grounds. (Paragraphs 68 through 79 of Petitioner's 8th amended complaint.)

VI. The *Kirchmann* court admits that its decision falls well outside of the mainstream; moreover, on closer scrutiny, it is apparent that the *Kirchmann* court's premise is flawed.

California has waived the tort immunity of its school districts and explicitly permits them to be sued in state court on a tort claim whose source is a congressional enactment. (California Government Code §§815 and 811.8; Pet.App., pp. 155-156.) The *Kirchmann* Court attempted to get around the waiver granted under California Government Code §815, but its analysis is fraught with legal contradictions. (See Pet.App., p. 156.)

VII. The previous petition for a writ of certiorari was denied after this Court learned that the state appellate court had issued an opinion that appeared to be missing an entire section.

This Court could not address the previous petition properly because there were questions as to the completeness

of the appellate court's opinion; and the appellate court clarified matters far too belatedly.

CONCLUSION

The briefs submitted to this Court show that, while the appellate court in the original appeal executed its responsibilities dutifully, by contrast the appellate court in the appeal for which review is now being sought subjugated the Constitution, the teachings of this Court, and the notion of ordered government to the appellate court's own self interests---*i.e.*, the preservation of its image after it had mishandled the instant case, first in the issuance of an apparently incomplete opinion in the original appeal, followed by the debacle that emanated when, as a result of yet another error committed by the appellate court, the trial court on remand deemed some defendants to have been dismissed on appeal when, in fact, such was not the case. It was easier for the appellate court to lay blame at Petitioner's feet than to suffer embarrassment by acknowledging the true source of the problem.

This Court should review the within case to assure every future litigant that, no matter how embarrassing the error, no court will be permitted to place the preservation of its image ahead of the Constitution, the teachings of this Court, and the notion of ordered government.

ERRATUM

Petitioner acknowledges District Respondents' comment on page 14 of their opposition, regarding a statement made by Petitioner on page 24 of his petition; and so, Petitioner will restate the argument, proffered on page 24 of his petition, accordingly. In *Duke v. Grady Municipal Schools* (10th Cir. 1997), 127 F.3d 972 at 981, the court characterized the question of granting Eleventh Amendment

immunity to school districts as a "very confused area of the law." The instant case introduces even more complexity to this area of the law by and through its introduction of the academic freedom component to the debate. Thus, Petitioner argues, a clear and workable test is desperately needed in this area of the law, making it all the more important for this Court to address the question.

Respectfully submitted,

Anthony G. Vasek
Petitioner In Propria Persona

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No. 06-360

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On Petition For A Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

REPLY TO THE OPPOSITION OF RESPONDENT KEENAN & ASSOCIATES

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PETITIONER'S RESPONSES TO RESPONDENT KEENAN'S FLAWED ARGUMENTS

Three separate oppositions to the instant petition were filed by Respondent Keenan, Respondent Mason, and District Respondents. Because of the overlapping nature of respondents' arguments, the discussion of some of the points raised by Respondent Keenan's opposition may appear in Petitioner's replies to the two other oppositions.

I. There is incontrovertible evidence that certain defendants were deemed by the trial court to have been dismissed from the case.

Petitioner had received from the Superior Court a Notice of Status Conference dated May 1, 2002, which contained the following line printed in caps: "NOTE: ALL OTHER PARTIES HAVE BEEN NOTIFIED." (1 E033583 CT 219.) Petitioner thereupon called the clerk's office to ascertain the address(es) used by the Superior Court to notify the parties who had not substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues. Petitioner was informed by the clerk of the Superior Court that the parties who had not substituted the Law Offices of Dennis J. Walsh for the Law Firm of Walsh & Declues were listed as having been dismissed and that said defendants, therefore, had not been noticed. The record shows that, from that point forward, Petitioner insisted on exercising his right to proceed against the defendants whom the trial court deemed to be dismissed from the case. (Pet.App., pp. 52-56.) It is an absolute distortion of the truth for Respondent Keenan to state that Petitioner "had some confusion in his mind as to who the parties were to the litigation." (Keenan Opp., p. 3.)

Moreover, the appellate order does *not* state, as Keenan would have us believe, that the individuals in

question were never deemed *by the trial court* to have been dismissed from the case. The appellate court's order of July 25, 2002, states that "the remittitur *need not be recalled* as requested by appellant to clarify that all such District officials and board members may no longer be considered dismissed from the case, *because the scope and effect of the reversal of the order dismissing them is clear on the record and as a matter of law*." (Pet.App. at 120; emphases are added.) In making that statement, the appellate order of July 25, 2002, was rectifying the trial court's error. Thus, the appellate order of July 25, 2002, operated as an order reinstating the defendants whom the trial court had deemed dismissed.

In arguing that the District Defendants who were subject to the original appeal were never missing, Keenan and District Defendants got tangled up in their own falsehoods and completely forgot about the incriminating evidence that District Defendants' attorneys themselves had provided earlier. Indeed, in papers filed on July 8, 2002, counsel for District Defendants listed as their clients only a fraction of the District Defendants who were subject to the original appeal (*cf.*, Pet.App. at 99 and 101), and claimed in those same papers (*cf.*, Pet.App. at 100) that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action."

II. There is incontrovertible evidence that Dennis Walsh did not represent the full complement of District Defendants throughout the post-appellate process.

On page 3 of its opposition to the instant petition, Respondent Keenan states: "As the [appellate] order [of July25, 2002] pointed out, all of the district defendants had been represented by Dennis Walsh throughout the appellate *and post-appellate* process." (Emphasis is added.) The appellate order did not say that at all. What the appellate

order said was that "the individual defendants listed in the September 5, 1996, dismissal order *were represented* [emphasis on past tense] by Mr. Walsh and his firm *throughout the appellate proceedings.*" (Pet.App. at 120; emphasis is added.) The appellate order makes no statement with regard to representation on remand to the trial court.

If it is true that Dennis Walsh had represented all District Defendants "throughout the appellate and post-appellate process," then why did Dennis Walsh file substitutions of attorney for some, but not all, of the District Defendants? The attorneys for District Defendants avoid addressing this question in their opposition to the instant petition. They merely state on pages 4-5 that "District Respondents' demurrer and motion to strike papers, filed on August 16, 2002, "clearly identified the District Official defendants as being represented by counsel." However, in papers filed on July 8, 2002, counsel for District Defendants listed as their clients only a fraction of the District Defendants who were subject to the original appeal (*cf.*, Pet.App. at 99 and 101), and claimed in those same papers (*cf.*, Pet.App. at 100) that "the purported 'missing defendants' bear no relevance to the trial court proceedings in this action."

III. Prior to the reinstatement of the "missing" defendants, Petitioner's memorandum of costs on appeal was vulnerable to certain attack.

The record is replete with evidence that it would have been *futile* for Petitioner to submit a memorandum of costs earlier than he did; for, the trial court was adamant about deeming the "missing" individuals as dismissed from the case; and if Petitioner had attempted to submit a memorandum of costs on appeal before these "missing" defendants were reinstated, Petitioner would have come under attack for having "improperly claimed costs as to

parties against whom he did not prevail on appeal" as State Respondents themselves later argued (*cf.*, State Respondents' Appellate Reply Brief, p. 15). Thus, Respondent Keenan was incorrect when it stated, on page 3 of its opposition, that "[t]here is nothing to have prevented [Petitioner] from filing his Memorandum of Costs on Appeal as to District Defendants or any other defendants."

IV. It became quite apparent, from the tenor of the appellate proceedings, that oral argument would be but an exercise in futility.

Respondent Keenan's statements regarding oral argument (*cf.*, Keenan's Opp., p. 5) do not present the facts fully. In his letter to the appellate court, filed on March 3, 2006, Petitioner noted that the appellate court had not addressed his *alternative* request for leave to submit a supplemental brief. "Presumably," the letter states, "the Court's silence on the matter indicates the Court's reluctance to grant such leave." Petitioner therefore informed the appellate court that, based upon the appellate court's apparent reluctance to grant such leave, he would respectfully decline to appear for oral argument. The reasons, he said, are simple:

> "The results of a white paper, presently being reviewed by individuals of diverse backgrounds, show that the tentative opinion is so fundamentally flawed as to require a complete and extensive re-analysis of the appeal. To demonstrate this to the panel, I would have to make more than 50 references to the record and the panel's tentative opinion. That would take considerably more time than has been allotted to me by this Court. Moreover, the tenor of the tentative opinion suggests that the panel may not be as receptive to criticism from me [a non-lawyer] as it needs to be. Thus, my appearance would serve no purpose but to irritate the members of the panel, and I

> have no interest in doing that. In short, all of these factors taken together would reduce my appearance to an exercise in futility."

The letter ends with Petitioner's statement that his absence at oral argument "is not to be construed as a concession on the issues."

The appellate court could have responded to Petitioner's letter of March 3, 2006, by granting the parties leave to submit supplemental briefs. The appellate court, however, chose not to do so. Instead, the appellate court issued an order dated March 6, 2006, in which the appellate court deemed Petitioner's letter a waiver of oral argument and, on that basis, ordered the matter off calendar and declared that "[t]he cause stands submitted."

V. It is well established that issues embraced in an appeal fall outside of the jurisdiction of a trial court and cannot be adjudicated, pending the appeal.

Trial court proceedings were stayed, pending Petitioner's request for review by the California Supreme Court. It is respondents' burden to show why what applies to the filing of a petition to the California Supreme Court does not apply to the filing of a petition to the U.S. Supreme Court. Respondents, however, make no such showing in their oppositions.

Since the filing of Petitioner's instant petition to the U.S. Supreme Court, the U.S. Bankruptcy Court for the Central District of California has regularly continued its hearings in the adversary proceedings brought by Petitioner against Respondent Mason, pending Petitioner's instant petition to the U.S. Supreme Court. (*In Re Roy and Debra Mason*, RS 03-16638 DN; *Vasek v. Debtor Mason*, Adv. RS

03-1514). Indeed, it is a well established principle of law that issues embraced in an appeal fall outside the jurisdiction of a trial court and cannot be adjudicated, pending the appeal. If further authority is needed to clarify that this principle applies to petitions to the U.S. Supreme Court as well, then this Supreme Court should grant the instant petition to address the matter.

CONCLUSION

The briefs submitted to this Court show that, while the appellate court in the original appeal executed its responsibilities dutifully, by contrast the appellate court in the appeal for which review is now being sought subjugated the Constitution, the teachings of this Court, and the notion of ordered government to the appellate court's own self interests---*i.e.*, the preservation of its image after it had mishandled the instant case, first in the issuance of an apparently incomplete opinion in the original appeal, followed by the debacle that emanated when, as a result of yet another error committed by the appellate court, the trial court on remand deemed some defendants to have been dismissed on appeal when, in fact, such was not the case. It was easier for the appellate court to lay blame at Petitioner's feet than to suffer embarrassment by acknowledging the true source of the problem.

This Court should review the within case to assure every future litigant that, no matter how embarrassing the error, no court will be permitted to place the preservation of its image ahead of the Constitution, the teachings of this Court, and the notion of ordered government.

Respectfully submitted,

Anthony G. Vasek
Petitioner In Propria Persona

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SUPREME COURT, U.S.

No. 06-360

In The

Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

REPLY TO RESPONDENT MASON'S OPPOSITION

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PETITIONER'S RESPONSES TO RESPONDENT MASON'S FLAWED ARGUMENTS

Three separate oppositions to the instant petition were filed by Respondent Keenan, Respondent Mason, and District Respondents. Because of the overlapping nature of respondents' arguments, the discussion of some of the points raised by Respondent Mason's opposition may appear in Petitioner's replies to the two other oppositions.

I. Despite Respondents' claims to the contrary, Petitioner was entitled, *as of right*, to have the defendants, erroneously deemed by the trial court to have been dismissed from the case, appear in the trial court to answer the complaint.

Initially, Petitioner had indicated to the trial court that, prior to amending his complaint, he would file a motion for leave to amend the complaint as to all defendants. On further reflection, however, Petitioner realized that, based upon the specific circumstances of the case, the limitations which the trial court sought to place upon him in fact violated Petitioner's inherent rights and the holding in *Felder v. Casey* (1988), 487 U.S. 131. Petitioner, therefore, refocused his attention on preserving his inherent rights and asserting the protections afforded by *Felder*.

Though Respondent Mason claims, on page 12 of his opposition to the instant petition, that he does not know why Petitioner made no attempt to seek leave of court to amend his complaint, Mason in fact is well aware of Petitioner's reasons for not doing so; for, Mason was one of the first to challenge Petitioner on this issue, arguing in one of his trial court papers (*cf.*, Pet.App. at 114):

> "If VASEK wishes to add parties to this action, he has a remedy in the form of a motion for leave to file an

> amended complaint. See, CCP section [sic] 473(a). If VASEK convinces this Court that an amendment is proper, then an amendment can be permitted. *Otherwise, VASEK will have to litigate this matter on the terms and with the parties as set forth.*" (Emphasis is added.)

Petitioner challenged these assertions in appellate papers which were served upon Mason and all other respondents. Said papers argued that Petitioner could not be required to first go through the time and expense of filing a motion pursuant to California Code of Civil Procedure §473(a)---and the possibility of receiving an adverse ruling---in order to obtain something which he could, and did, *demand as of right.* (Pet.App. at 113-118.)

II. Petitioner did not violate the trial court's order granting him leave to file an 8th amended complaint, as Respondents claim.

When it granted Petitioner leave to amend his complaint, the trial court stated: "Any new allegations by the plaintiff are to be limited solely to *addressing the pleading defect placed at issue by Grosz and Hartley's motion* for judgment on the pleadings." (E033583 CT 295, lines 6-8; emphasis is added.) The pleading defect placed at issue by Grosz and Hartley's motion for judgment on the pleadings was "failure to file suit within the applicable statute of limitations period." (E033583 CT 55, lines 2-3.) Thus, the trial court's order did not say, as Respondents would have us believe, that Petitioner could not amend his complaint as to anyone other than Grosz and Hartley.

In composing his 8th amended complaint, Petitioner followed the appellate court's specific guidelines as stated on page 43 of its previous opinion:

> "'To establish a continuing violation [a plaintiff has] to show "a series of related acts, *one or more of which falls within the limitations period*, or the maintenance of a discriminatory system both before and during the [limitations] period.'" [Citations.] A continuing violation may thus be established not only by demonstrating a company wide policy or practice, *but also by demonstrating a series of related acts against a single individual.* [Citation.] In the latter instance, '[the] question . . . boils down to whether sufficient evidence supports a determination that the "alleged discriminatory acts are related closely enough to constitute a continuing violation."'" (Emphases are added.)

Thus, to show that Grosz's and Hartley's acts against Petitioner were among the first in a *continuing* series of related acts that eventually culminated in the malicious prosecution of an administrative proceeding against him, Petitioner was forced to introduce new allegations that involved other defendants who committed related acts that fell within the limitations period. That was well within the dictates of the trial court's order, since the continuing violation is relevant to whether Grosz and Hartley were part of a single overriding and all-encompassing conspiracy.

III. Respondent Mason and others like him are muddying the waters to mislead this Court and evade culpability for wrongs committed against Petitioner.

Respondent Mason claims on page 2 of his opposition that on remand he "filed a demurrer to the third amended complaint, *the most recent version naming Mason.*" (Emphasis is added.) The statement is untrue, but Mason's attorney insists on promulgating it even though its falsehood has been repeatedly brought to her attention. She persists in

her efforts to misstate the facts not only to help Mason evade culpability for wrongs committed against Petitioner but also to mislead this Court regarding the issues at play here. To demonstrate how far she has gone---and is willing to go---to achieve her aims, Petitioner offers the following as insight into the *quo animo* of Mason's attorney and, to a lesser degree, the rest of the respondents herein.

In a previous attempt to evade the damning realities of her client's involvement in the retaliatory measures taken against Petitioner under color of law, as described in Petitioner's seventh amended complaint (*cf.*, Related Appeal E020125 CT 35-89), Mason's attorney filed a bogus demurrer to Petitioner's third amended complaint and claimed therein that the last pleading to name Mason as a party was the third amended complaint. (E033583 SCT 133, line 18.) The record clearly shows, however, that the last pleading to do so before remand was the *seventh* amended complaint, a fact about which Ms. Roberts was clearly aware since *her own* declaration in support of her previous motion to compel had stated: "...and today the operative complaint is the *Seventh* Amended Complaint." (E033583 SCT 58, ¶; emphasis is added.)

To overcome Petitioner's challenge (*cf.*, E033583 CT 350, line 16 to E033583 CT 351, line 16), she then altered her story by claiming in her reply papers that the seventh amended complaint did not name Mason in the caption nor did it describe him in the introduction and, therefore, he was not a proper party to the seventh amended complaint (*cf.*, E033583 CT 412, lines 7-12). But here again, the record shows that Mason was indeed named in the caption and described in the introduction. (Related Appeal E020125 CT 1; Related Appeal E020125 CT 3, ¶ 31.)

Then, despite clear evidence to the contrary, Mason's attorney continued to maintain that the operative complaint,

as to Mason, was the *third* amended complaint in a later hearing had before the trial court. (E033583 CT 640, lines 25-27; E033583 CT 643, line 19.) She continued her misrepresentation in a declaration filed in support of her demurrer to Petitioner's eighth amended complaint, stating *under oath*, despite clear and well established evidence to the contrary, that "the last pleading to name MASON as a party was the third amended complaint, which was filed on April 24, 1995." (E033583 SCT 597, lines 14-16.) She then unabashedly restated the falsehood in ¶ 7 of said declaration: "Placed between a rock and hard place *because he was not named in the latest amended complaint (the seventh)*, Dr. MASON did what he could and filed a demurrer to the last complaint that named him (the Third), on June 20, 2002." (E033583 SCT 598, lines 13-15; emphasis is added.)

In her demurrer to the eighth amended complaint, Mason's attorney persisted with her falsehoods, stating: "Indeed, Dr. MASON's name is not even mentioned under the first cause of action!" (E033583 SCT 587, line 9.) She went on to state: "To be sure, Dr. MASON is not mentioned in the eighth amended complaint until page 22 [¶ 114]." (E033583 SCT 587, lines 13-14.) An examination of Petitioner's eighth amended complaint, however, shows that Mason, whose capacity is described initially on page 4 [¶ 23] of the complaint, is referred to and implicated on pp. 6-8, pp. 21-38, and in *every* paragraph under the heading, FIRST CAUSE OF ACTION, except ¶¶ 156 and 165. (E033583 CT 371, 373-375, 388-405.)

Then, even after the state trial court had made it clear to her that the operative complaint as to Defendant Mason was now indeed the 8th amended complaint, Mason's attorney filed in the U.S. Bankruptcy Court, on behalf of Mason (*cf.*, *In Re Roy and Debra Mason*, RS 03-16638 DN; *Vasek v. Debtor Mason*, Adv. RS 03-1514), papers that claimed the operative complaint in the state trial court was

the 3rd amended complaint. Petitioner challenged Mason's contention (*cf.*, Appendix, p. 32, lines 5-36) by bringing to the U.S. Bankruptcy Court's attention an exchange between the state trial court and Mason's attorney that demonstrated conclusively that the operative complaint at issue was indeed the 8th amended complaint and that Mason and his attorney were well aware this was so. (E033583 CT 644, line 18 to E033583 CT 645, line 9.)

> "THE [STATE] COURT: The Court's---in the Court's opinion, the 3rd amended complaint is now moot, and the 11th---that was probably a Freudian slip---the 8th amended complaint mentions Dr. Mason. And to the extent that Dr. Mason is in any way involved in this complaint, it is *solely on the basis of whatever allegations concern him in the 8th amended complaint. And the 3rd amended complaint is of no further force and effect.* [Emphases are added.]
>
> "If you would like us to make an order to that effect, that would be fine.
>
> "MS. ROBERTS: I think I'm understanding where the Court is coming from. In the Court's opinion *the 3rd amended complaint is no longer the operative complaint as to Dr. Mason.* [Emphasis is added.]
>
> "THE [STATE] COURT: Or as to anybody.
>
> "MS. ROBERTS: Or as to anybody. *I understand.* And that my responsive pleadings to now *need address the 8th amended complaint* where there's subs[tan]tive challenge or procedural, or a combination of those, if I understand correctly. [Emphases are added.]

"THE [STATE] COURT: Correct."

Upon being informed of the foregoing exchange between the state trial court and Mason's attorney, the U.S. Bankruptcy Court rejected Mason's contention and ordered the automatic stay modified to allow Vasek to proceed against Mason in the courts of review.

The foregoing is but one example of what Petitioner has had to endure throughout these past 12 years, with little succor from the courts below. Mason's attorney and the other respondents, to a lesser extent, are employing essentially the same tactics in their presentations before this Court.

IV. Respondent Mason and others like him are liable for acts of malicious prosecution, notwithstanding the appellate court's recent about face.

Respondents' claims to the contrary notwithstanding, there was nothing in the previous appellate decision that prohibited Petitioner from alleging a continuing violation that culminated in the malicious prosecution of an administrative proceeding against him. Indeed, Petitioner's appellate reply brief in the original appeal had informed the appellate court of his intention to include, in his amended complaint on remand, an action in negligence and an action in malicious prosecution. As to the action in malicious prosecution, Petitioner had stated on page 35 of his appellate reply brief:

> "The conduct, to which this general set of facts points, was of an on-going and continuing nature, culminating in the bringing of more than 40 charges of dismissal (described in detail in Vasek's sixth amended complaint) from which ultimately Vasek was exonerated completely. Thus, the

> abridged complaint will not only allege in sufficient detail the facts showing that Attorney Respondents are liable under 42 U.S.C. 1983 for participating in a nine-year-long course of action against Vasek, but it will also allege a cause of action in malicious prosecution against Attorney Defendants/Respondents and a number of District Defendants/Respondents, based upon WESTAMCO INVESTMENT CO. v LEE (1999), 69 Cal App 4th 481."

Though the appellate court stated, in the opinion that followed, that Petitioner would be precluded on remand from pursuing an action in negligence, the opinion made no such statement with regard to Petitioner's stated intention to pursue an action in malicious prosecution.

Indeed, in an order filed on September 3, 1999, the appellate court had gone the extra mile to state: "The court's preliminary review of the documents in these appeals, *including the findings of the administrative law judge* (Appendix D) and the remedial actions taken by appellant's college after the failed attempt to dismiss appellant (Appendix F), shows appellant's lawsuit to have been based on nonfrivolous allegations of improper treatment by his college." (Emphasis is added.)

Five years later, the appellate court did an about face. Confronted with the fact that, in 12 years, the case had not even progressed to the discovery stage, the appellate court chose to avoid embarrassment by finding against Petitioner under the guise of "procedural error." The effect was to punish Petitioner to the tune of $17,543.45 (in assessed costs, sanctions, and the eradication of costs previously awarded Petitioner) for his having demanded, *as of right*, to have the defendants, deemed by the trial court to have been dismissed from the case, appear in the trial court to answer his complaint and memorandum of costs on appeal.

CONCLUSION

The briefs submitted to this Court show that, while the appellate court in the original appeal executed its responsibilities dutifully, by contrast the appellate court in the appeal for which review is now being sought subjugated the Constitution, the teachings of this Court, and the notion of ordered government to the appellate court's own self interests---*i.e.*, the preservation of its image after it had mishandled the instant case, first in the issuance of an apparently incomplete opinion in the original appeal, followed by the debacle that emanated when, as a result of yet another error committed by the appellate court, the trial court on remand deemed some defendants to have been dismissed on appeal when, in fact, such was not the case. It was easier for the appellate court to lay blame at Petitioner's feet than to suffer embarrassment by acknowledging the true source of the problem.

This Court should review the within case to assure every future litigant that, no matter how embarrassing the error, no court will be permitted to place the preservation of its image ahead of the Constitution, the teachings of this Court, and the notion of ordered government.

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